



**ROANOKE CITY COUNCIL
REGULAR SESSION**

**OCTOBER 19, 2015
2:00 P.M.**

**CITY COUNCIL CHAMBER
AGENDA**

1. Call to Order--Roll Call.

**DUE TO LACK OF A QUORUM AND AGENDA ITEMS, THE COUNCIL MEETING WILL
STAND IN RECESS UNTIL 7:00 P.M., IN THE CITY COUNCIL CHAMBER, ROOM 450,
NOEL C. TAYLOR MUNICIPAL BUILDING.**



**ROANOKE CITY COUNCIL
REGULAR SESSION**

**OCTOBER 19, 2015
7:00 P.M.**

CITY COUNCIL CHAMBER

AGENDA

Call to Order--Roll Call.

The Invocation will be delivered by Mayor David A. Bowers.

The Pledge of Allegiance to the Flag of the United States of America will be led by Mayor Bowers.

Welcome. Mayor Bowers.

NOTICE:

Tonight's Council meeting will be televised live and replayed on RVTV Channel 3 on Thursday, October 22 at 7:00 p.m., and Saturday, October 24 at 4:00 p.m.; and video streamed by Internet through Rev.Net Technologies, Inc., at <http://www.wrev.net>. Council Meetings are offered with closed captioning for the hearing impaired.

A. PRESENTATIONS AND ACKNOWLEDGEMENTS:

A Proclamation declaring October 2015 as Disability Employment Awareness Month.

A Proclamation declaring October 2015 as National Youth Justice Awareness Month.

B. NEW BUSINESS:

1. A resolution ratifying the recess of the 2:00 p.m. regular session of City Council scheduled for Monday, October 19, 2015. R 6
2. A communication from the City Manager requesting that Council schedule a public hearing for Monday, November 16, 2015, at 7:00 p.m., or as soon thereafter as the matter may be heard, to consider bids for a Gas Franchise Agreement and Pipeline License Agreement. P 7
3. A communication from the City Attorney requesting that Council schedule a public hearing for Monday, November 16, 2015, at 7:00 p.m., or as soon thereafter as the matter may be heard, to consider the adoption of a proposed Ordinance to realign voting precincts. P 9
4. A communication from the City Attorney requesting authorization to convey to the Roanoke Gas Company a revised ten foot wide gas line easement across City-owned property known as Official Tax Map No. 4015003, previously authorized by City Council on September 8, 2015. P 11
O 18
5. A report of the Roanoke City School Board requesting appropriation of funds for various educational programs; and a report of the Assistant Director of Finance recommending that Council concur in the request. P 20
P 21
B/O 23
6. A resolution designating a Voting Delegate and an Alternate Voting Delegate for the Business Meeting for the Annual National League of Cities Congress of Cities and Exposition to be held on Saturday, November 7, 2015, in Nashville, Tennessee.

C. PUBLIC HEARINGS:

1. Request of Franklin Road Properties, LLC, to rezone property located at 3302 Franklin Road, S. W., from R-12, Residential Single-Family District, to MX, Mixed Use District, subject to a proffered condition. Maryellen F. Goodlatte, Esquire, Spokesperson.
2. Request of Hunter Real Estate Group, LLC, to rezone property located at 2514 and 2518 Williamson Road, N. E., from CN, Commercial-Neighborhood District, to CG, Commercial-General District, subject to certain proffered conditions. Maryellen F. Goodlatte, Esquire, Spokesperson.
3. Request of the City of Roanoke Planning Commission to amend Section 36.2-311, Use table for residential districts, Chapter 36.2, Zoning, Code of the City of Roanoke, (1979), as amended, as it relates to accessory uses "home occupation, personal service", in certain residential districts. Ian D. Shaw, Agent, Spokesperson.
4. Request of PRMC, LLC, to amend the Planned Unit Development Plan as it pertains to 4414 Pheasant Ridge Road, S. W.; 4345 Griffin Road, S. W.; four unaddressed lots on Griffin Road, S. W.; and three unaddressed lots on Van Winkle Road, S. W., to permit construction of a 64 unit memory care facility and a 90 unit assisted living facility. James R. Smith, Chairman Manager, Spokesperson.
5. Proposal of the City of Roanoke to transfer a permanent easement to the Commonwealth of Virginia Department of Transportation, consisting of an approximately 0.239 acre portion of City-owned property, known as Brown-Robertson Park, located in the southwestern portion of such Park, on 10th Street, N. W.; and the transfer of a temporary construction easement on an approximately 0.775 acre portion of such Park, in connection with the Tenth Street Improvement Project. Daniel J. Callaghan, City Attorney.
6. Proposal of the City of Roanoke to vacate an existing 15-foot storm drain easement situated at McVitty Road, S. W., for development of a medical office space and other commercial purposes by Gatewood Green, LLC; and dedication of a new 10-foot public drainage easement to the City and a variable width private drainage easement to be maintained by Gatewood Green, LLC. Daniel J. Callaghan, City Attorney.

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O 166

P 169
O 172

7. Proposal of the City of Roanoke to lease an approximately 0.1671-acre parcel of property, to be acquired and owned by the City, located at 709 South Jefferson Street, S. W., known as the former Gill Memorial Hospital Building, to Virginia Western Community College Educational Foundation, Inc., for a term of five years, commencing on the date the Foundation, or its designee, first occupies the Gill Memorial Property. Christopher P. Morrill, City Manager.

P 174 O 234

D. HEARING OF CITIZENS UPON PUBLIC MATTERS:

CITY COUNCIL SETS THIS TIME AS A PRIORITY FOR CITIZENS TO BE HEARD. ALL MATTERS WILL BE REFERRED TO THE CITY MANAGER FOR RESPONSE, RECOMMENDATION OR REPORT TO COUNCIL, AS HE MAY DEEM APPROPRIATE.

E. ADJOURN.

Handwritten signature

B. I.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

A RESOLUTION ratifying the recessing of the Regular Session of City Council scheduled for Monday, October 19, 2015, at 2:00 p.m., by the City Clerk due to a lack of a quorum and agenda items.

BE IT RESOLVED by the Council of the City of Roanoke that due to the lack of a quorum and the lack of agenda items at the 2:00 p.m. Regular Session of Council for Monday, October 19, 2015, ratifies and confirms that the meeting was recessed by the City Clerk to the 7:00 p.m. Regular Session of Council for Monday, October 19, 2015.

ATTEST:

City Clerk.



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: Request to Schedule Public Hearings to Consider Bids for a Gas Franchise Agreement and Pipeline License Agreement

Background:

The 20-year natural gas distribution franchise agreement between the City of Roanoke and Roanoke Gas Company will expire on December 31, 2015. Likewise, the 20-year pipeline license agreement between the City of Roanoke and Roanoke Gas Company will expire on December 31, 2015.

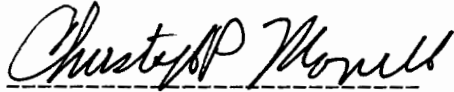
The City intends to invite bids from qualified bidders for a certain franchise to construct, operate and maintain a natural gas distribution system in the City of Roanoke, Virginia, upon certain terms and conditions, as set forth in a proposed Franchise Agreement. The proposed Franchise Agreement is to be executed by the successful bidder, for a term of twenty years, upon certain terms and conditions, the right, privilege, franchise and authority to use the streets, alleys and public ways within the limits of the City of Roanoke, Virginia, to construct, operate and maintain a certain natural gas distribution system.

The City also intends to invite written bids for the right to construct, operate and maintain a natural gas transmission pipeline for a term of twenty years within a certain right-of-way approximately 14,129 feet in length on City-owned property known as the Carvins Cove Reservoir property in Botetourt County, Virginia, and Roanoke County, Virginia.

Under Sections 15.2-2100 and 15.2-2101, Code of Virginia (1950), as amended, the City is required to give public notice, conduct a public hearing, and adopt an ordinance by City Council. Subject to City Council's concurrence to this request, the required legal advertisements will be placed in the Roanoke Times on November 2, 2015 and November 9, 2015. The deadline for submittal of bids to the City Clerk from interested parties will be on Monday, November 16, 2015 at 12:00 noon. Bids received will be opened at the City Council meeting on Monday, November 16, 2015 during the 2:00 pm session, and referred to the City Manager for review and recommendation. The public hearing on the bids received will be held on Monday, November 16, 2015 at the City Council's 7:00 pm session.

Recommended Action:

Authorize the City Clerk to schedule and advertise public hearings to consider bids for a gas franchise agreement and pipeline license agreement to be held on November 16, 2015, at 7:00 p.m., or as soon thereafter as the matter may be reached, or such other date and time as deemed appropriate by the City Manager.

A handwritten signature in black ink, reading "Christopher P. Morrill". The signature is written in a cursive style with a horizontal line underneath.

Christopher P. Morrill
City Manager

Distribution: Council Appointed Officers
Sherman Stovall, Assistant City Manager for Operations
Barbara Dameron, Director of Finance
Bob Bengtson, Director of Public Works



Daniel J. Callaghan
City Attorney

CITY OF ROANOKE
OFFICE OF THE CITY ATTORNEY
464 MUNICIPAL BUILDING
215 CHURCH AVENUE, SW
ROANOKE, VIRGINIA 24011-1595

TELEPHONE 540-853-2431
FAX 540-853-1221
EMAIL: cityatty@roanokeva.gov

Timothy R. Spencer
Steven J. Talevi
David L. Collins
Heather P. Ferguson
Laura M. Carini
Assistant City Attorneys

October 19, 2015

The Honorable Mayor and Members
of City Council
Roanoke, Virginia

Re: Request Public Hearing for Proposed Ordinance to Realign Voting Precincts

Dear Mayor Bowers and Members of Council:

This report is to provide you with a current status report regarding consideration of the realignment of Voting Precincts within the City.

Background

Currently, the City of Roanoke has established 32 voting precincts within the City and one (1) central absentee voting precinct at the Noel C. Taylor Municipal Building. In 2011, City Council requested the Electoral Board to review the current alignment of voting precincts and make recommendations for changes and adjustments. The Electoral Board submitted its initial recommendation that the 32 voting precincts be reduced to 26 voting precincts and the one (1) central absentee voting precinct remain at the Noel C. Taylor Municipal Building. City Council did not take any action on this recommendation and requested the Electoral Board to conduct a further review.

In 2012, the Electoral Board recommended a plan to reduce the number of voting precincts from 32 to 19 and maintain one (1) central absentee voting precinct. The Electoral Board hosted five (5) informational sessions in various parts of the City to solicit input from citizens regarding this proposal. Council set this proposal for public hearing on November 19, 2012. Council took no action to adopt or reject this proposal. Council created a nine (9) member Election Precinct Task Force to review the current alignment of voting precincts within the City and make a recommendation to Council.

The Election Precincts Task Force recommended that the City realign its voting precincts by reducing the number of precincts to 20 and maintaining one (1) central absentee voting precinct (Task Force Recommendation). The Election Precinct Task Force presented the Task Force Recommendation to Council on June 3, 2013. Following this presentation, Council directed the City Attorney to prepare an ordinance that incorporated the Task Force Recommendation.

During a review of the proposed ordinance to create 20 voter precincts within the City and maintain one (1) absentee voter precinct at the Noel C. Taylor Municipal Building, City staff, including the General Registrar, the City Attorney, and GIS staff discovered that the current boundaries of House of Delegates Districts 11 and 17 did not follow the precinct lines as established in current City Code. Council tabled further discussion of any precinct realignment until City staff could explore the possibility that the General Assembly would amend the boundaries of House of Delegates Districts 11 and 17 to conform those boundaries to the existing City precinct boundaries. The General Assembly did not consider any adjustment to the boundaries of House of Delegates Districts 11 and 17 during the 2015 session of the General Assembly.

City staff worked with Council Member Bestpitch to develop a precinct realignment plan with the primary objective of creating voting precincts with active voters in a more even distribution within the precincts. The City Attorney, the Registrar, members of the Electoral Board, and City staff within the Department of Technology developed a proposed ordinance to reflect these proposed changes. The proposed ordinance amends the existing alignment of voting precincts and establishes 21 voting precincts, designates a polling place within each precinct, and maintains one (1) central absentee voting precinct at the office of the General Registrar.

Recommended Action

Authorize the scheduling and advertising of a public hearing on November 16, 2015, at 7:00 p.m., or as soon thereafter as the matter may be heard, or at such later date and time as the City Manager may determine, and that the public hearing be advertised in accordance with the requirements of Section 24.1-306(A) of the Code of Virginia (1950), as amended, to receive comments and input from the public on the Fall 2015 Plan.

Thank you for your consideration.

Sincerely,



Daniel J. Callaghan
City Attorney

c: Council Appointed Officers (w/atta)

R. Brian Townsend, Assistant City Manager for Community Development (w/atta)

Sherman Stovall, Assistant City Manager for Operations (w/atta)

Andrew Cochran, General Registrar (w/atta)

B.4.



Daniel J. Callaghan
City Attorney

CITY OF ROANOKE
OFFICE OF THE CITY ATTORNEY
464 MUNICIPAL BUILDING
215 CHURCH AVENUE, SW
ROANOKE, VIRGINIA 24011-1595

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Timothy R. Spencer
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Laura M. Carini
Assistant City
Attorneys

October 19, 2015

The Honorable David Bowers, Mayor
and Members of City Council
Roanoke, Virginia

Re: Request from Roanoke Gas Company for an Ordinance to
Revise a Ten foot Wide Gas Line Easement Across City
Owned Property Designated as Official Tax Map No.
4015003 Previously Authorized by City Council

Dear Mayor Bowers and Members of Council:

Background:

By Ordinance No. 40338-090815, adopted on September 8, 2015, City Council authorized the conveyance of 10' wide gas line easement across City owned property, designated as Roanoke Official Tax Map No. 4015003, located at 25 Church Avenue, S.E., Roanoke, Virginia, adjacent to the new Hampton Inn and Suites in downtown Roanoke, to Roanoke Gas Company ("Roanoke Gas") in order to supply utility service to the hotel. Roanoke Gas subsequently revised the proposed gas line easement, and now requests the City to execute a revised deed of easement conveying the new gas line easement to Roanoke Gas Company. The revised proposed Deed of Easement and Map are attached to this letter.

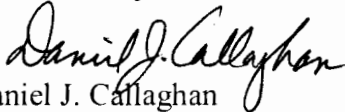
Considerations:

The revisions made to the proposed gas line easement by Roanoke Gas increases the total area of the easement by approximately 100 sq. ft. over the gas line easement City Council previously authorized pursuant to Ordinance No. 40338-090815. The increase in the area of the easement requires that City Council authorize the new gas line easement. Conveyance of the new gas line easement is in the best interest of the City and its citizens. Because the proposed easement is a site development easement for utilities across public property consistent with the City's capital improvement program, a public hearing is not required for City Council to consider this matter pursuant to the exception contained under Section 15.2-1800 of the Code of Virginia (1950), as amended.

Recommended Action:

Authorize the City Manager to execute a Deed of Easement, substantially similar in form to the proposed easement attached to this letter, conveying the revised gas line easement across City owned property designated as Official Tax Map No. 4015003, to Roanoke Gas Company. All documents necessary for this conveyance shall be upon form approved by the City Attorney.

Sincerely,


Daniel J. Callaghan
City Attorney

- c: Christopher P. Morrill, City Manager
R. Brian Townsend, Assistant City Manager
for Community Development
Sherman Stovall, Assistant City Manager
for Operations
Barbara Dameron, Director of Finance
Troy D. Harmon, City Auditor
Stephanie Moon Reynolds, City Clerk

Exhibit 1

Tax Map No. 401130
Owner: CHURCH
& FUND

Tax Map No. 4011311
Owner: WESTERN VIRGINIA
FOUNDATION FOR THE

Tax Map No. 4011316
Owner: MUSSELLWHITE
PROPERTIES LLC

Tax Map No. 4011407
Owner: VIRGINIA ASSOCIATION
OF COUNTIES GRO

Market St Se

Church Ave Se

From Corner of Building

Tax Map No. 4015004
Owner: CITY OF
ROANOKE VIRGINIA
Inst # 040000603

Tax Map No. 4015005
Owner: NORFOLK AND
WESTERN RAILWAY COMPANY

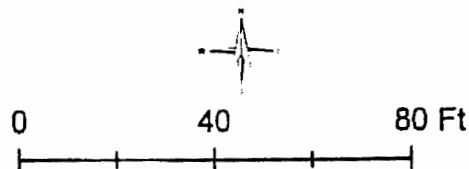
Tax Map No. 4015002
Owner: FUND
IV BOB LP

Tax Map No. 4015003
Owner: CITY
OF ROANOKE
Inst # 040000603

10 Foot Gas Line Easement

Plat of Easement for Roanoke Gas Company

Showing Proposed 10 Foot Gas Line Easement
Being Granted By: City Of Roanoke
PO Box 1451 Roanoke VA 24007
Tax ID: 4015003



Date: 10/7/2015

Prepared by:

Roanoke Gas Company
P.O. Box 13007
Roanoke, VA 24030

Exemption claimed: Grantor is exempted from recordation taxes and
Fees pursuant to Section 58.1-811C(4) Code of Virginia (1950) as amended

Tax Map No. 4015003

THIS DEED OF EASEMENT, made this ____ day of _____, 2015, by and
between the **CITY OF ROANOKE, VIRGINIA**, a Virginia municipal corporation , hereinafter
referred to as "Grantor"; and **ROANOKE GAS COMPANY**, a Virginia corporation, hereinafter
referred to as "Grantee".

W I T N E S S E T H

WHEREAS, Roanoke City Council authorized the conveyance of this easement to Grantee
pursuant to Ordinance No. _____, adopted by Roanoke City Council on October 19, 2015;
and

THAT, FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00) and other
good and valuable consideration, paid by Grantee to Grantor, the receipt and sufficiency of which is
hereby acknowledged, the Grantor does hereby grant unto Grantee, its successors and assigns, the
right of way and easement to construct, install, operate, repair, and maintain a gas pipeline (with
appliances and accessories useful and necessary in connection therewith) over, under, through and

across its land in the City of Roanoke, Commonwealth of Virginia, and being more described as follows:

A ten (10) foot wide gas line easement, as shown on the plat titled "Plat of Easement for Roanoke Gas Company Showing Proposed 10 Foot Gas Line Easement Being Granted by City of Roanoke", dated October 7, 2015, prepared by Roanoke Gas Company, a copy of which is attached hereto and incorporated herein. Grantor's property is identified on the City of Roanoke Land Records as Official Tax Map No. 4015003.

**IT IS UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES
HERETO THAT THIS RIGHT OF WAY AND EASEMENT AND THE
RIGHTS**

Prepared by Roanoke Gas Company
P.O. Box 13007, Roanoke, VA 24030

**GRANTED HEREUNDER ARE SUBJECT TO THE FOLLOWING COVENANTS, TERMS,
AND CONDITIONS:**

1. The Grantee agrees to restore and repair any damage to the Grantor's property that may be caused by the construction, operation, or maintenance of said gas pipeline at Grantee's expense. The Grantor agrees that the Grantee will not be expected to restore the property to the identical original condition, but rather as near thereto as practicable and that the Grantors will cooperate with the Grantee in effectuating such restoration. Areas that are currently asphalt pavement shall be repaved, and areas that are currently grass covered shall be re-seeded and covered with straw mulch in appropriate quantities.
2. Grantee will indemnify and save the Grantor harmless against any and all loss or damage, accidents, or injuries, to persons or property, whether of the Grantor or of any other persons or corporations arising in any manner from the negligence of Grantee in the construction, operation, or maintenance, or failure to properly construct, operate, or maintain its facilities installed upon the right of way granted by this deed of easement.
3. The term of this easement shall be limited to 40 years in accordance with Section 15.2-2100 (B) of the Code of Virginia (1950) as amended, which easement shall commence on November 1, 2015, and expire on October 31, 2045, at which time the rights herein conveyed shall automatically revert to Grantor without any additional action required by the parties.

By: _____ (SEAL)
Printed Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA)
) To-wit:
CITY OF ROANOKE)

My commission expires: _____

Registration No. _____

Assistant City Attorney

MC

B.4.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the conveyance of a forty (40) year non-exclusive gas line easement, with an approximate width of ten (10) feet, across City-owned property located at 25 Church Avenue, S.E., Roanoke, Virginia, designated as Official Tax Map No. 4015003, to Roanoke Gas Company ("Roanoke Gas"), upon certain terms and conditions; and dispensing with the second reading by title of this Ordinance.

WHEREAS, pursuant to Ordinance No. 40338-090815, adopted on September 8, 2015, City Council authorized the conveyance of 10' wide gas line easement across City owned property, designated as Roanoke Official Tax Map No. 4015003, to Roanoke Gas, in order for Roanoke Gas to supply utility service to the downtown Roanoke Hampton Inn and Suites,

WHEREAS, subsequent to the adoption of such ordinance, Roanoke Gas determined that it needed to enlarge the area of such gas line easement, and has requested the City to convey Roanoke Gas a larger easement; and

WHEREAS, the City desires to convey Roanoke Gas the revised gas line easement for a term not to exceed 40 years, in accordance with Section 15.2-2100 of the Code of Virginia (1950) as amended.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. The City Manager is hereby authorized, for and on behalf of the City, to execute the necessary documents providing for the conveyance of a forty (40) year non-exclusive gas line easement, with an approximate width of ten (10) feet, across City-owned property located at 25 Church Avenue, S.E., designated as Official Tax Map No. 4015003, to Roanoke Gas Company, to construct, install, operate, repair, and maintain a gas pipeline (with appliances and accessories useful and necessary in connection therewith) over, under, through and across its land, in order to supply service to the new Hampton Inn and Suites located at 25 Church Avenue, S.E., as more particularly set forth in the City Attorney's Letter to City Council dated October 19, 2015, and the attachment to that letter.

2. All documents necessary for this conveyance shall be in a form approved by the City Attorney.

3. Pursuant to Section 12, Roanoke City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk



E.S.

**ROANOKE CITY
PUBLIC SCHOOLS**

Strong Students. Strong Schools. Strong City.

October 19, 2015

The Honorable David Bowers, Mayor
and Members of Roanoke City Council
Roanoke, VA 24011

Dear Members of Council:

As a result of official School Board action on Tuesday, October 13, 2015, the Board respectfully requests that City Council approve the following appropriation requests:

<u>New Appropriations</u>	<u>Award</u>
Fresh Fruits and Vegetable Program 2015-2016	\$320,363.33
Start-Up Grant for Extended School Year 2015-2016	\$1,356,061.00
School Security Equipment 2015-2016	\$109,998.00
e-Learning Backpack Initiative 2015-2016	\$205,920.00

<u>Revised Appropriations</u>	<u>Additional Award</u>
Regional Alternative Education 2015-2016	\$41,642.00
Juvenile Detention Center and Child Development Clinics 2015-2016	\$51,093.57
Governor's School 2014-2015	\$3,580.00

On behalf of the School Board, thank you for your consideration.

Sincerely,

Cindy H. Poulton
Clerk

pc: Dan Callaghan
Chris Morrill
Barbara Dameron
Suzanne P. Moore

Rita D. Bishop
Kathleen Jackson
Acquenatta Harris (w/details)

School Board

Suzanne P. Moore
Chairman

Lori E. Vaught
Vice Chairman

Mark K. Cathey
William B. Hopkins, Jr.
Annette Lewis
Laura D. Rottenborn
Dick Willis

Dr. Rita D. Bishop
Superintendent

Cindy H. Poulton
Clerk of the Board



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: School Board Appropriation Request

Background:

As the result of official School Board action at its October 13, 2015 meeting, the Board respectfully requested that City Council appropriate funding as outlined in this report.

The Fresh Fruits and Vegetable Program 2015-16 grant of \$320,363 provides funding to assist the school in providing a fresh fruit or vegetable snack during the school day at times other than meal periods at least three times per week. The program is intended to create healthier school environments. The following schools have been accepted as participants in the Program for 2015-16: Fairview, Fallon Park, Garden City, Hurt Park, Lincoln Terrace, Monterey, Morningside, Preston Park, Roanoke Academy for Math and Science (RAMS), Round Hill and Westside Elementary Schools. This program will be fully reimbursed by federal funds and will end June 30, 2016.

The Start-Up Grant for Extended School Year 2015-16 grant of \$1,356,061 provides a greater opportunity for remediation and enrichment while reducing the potential for a decline in academic skills when school is not in session. The following Elementary Schools have received this award from the Virginia Department of Education: Hurt Park, Fallon Park, Roanoke Academy for Math and Science (RAMS), Lincoln Terrace, Garden City and Westside. This program will be fully reimbursed by State funds and will end June 30, 2016.

The Social Security Equipment 2015-16 grant of \$109,998 supports the purchase of security equipment to improve and help ensure the safety of students attending public schools in Virginia. Roanoke City Public Schools has received funding to assist with upgrades to its existing security camera systems for ten schools - Lincoln Terrace Elementary, Noel C. Taylor Academy at Oakland, Addison Middle, Breckinridge Middle, James Madison Middle, Stonewall Jackson Middle, Woodrow Wilson Middle, Patrick Henry High and William Fleming High. Grant expenses will be paid on a reimbursement basis out of state funds, and through the 25% required local match. This is a new program that will end in March 2016.

The Virginia e-Learning Backpack Initiative 2015-16 grant of \$205,920 provides every ninth grade student attending a public school that is not fully accredited with a laptop or tablet computer, digital content and applications, and access to content creation tools. Roanoke City Public Schools has received funding to assist with expanding the Portable Anytime Student Systems (PASS) laptop initiative to include the ninth grade at William Fleming High School. Grant expenses will be fully reimbursed by state and local match funds. The program will end June 30, 2016.

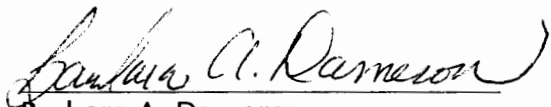
The Regional Alternative Education Program 2015-16 grant of \$41,642 provides funds for students who are academically delayed and provides the opportunity to participate in an accelerated academic program. This is a revision to the original award allocation, will be fully reimbursed by state funds and will end June 30, 2016. This is a continuing program.

The State Juvenile Detention Home and Child Development Clinics 2015-16 grant of \$51,094 provides educational services from state operated programs at the Roanoke Valley Juvenile Detention Center and the Virginia Department of Health's Roanoke Child Development Clinics. This is a revision to the original award allocation, will be fully reimbursed by state funds and will end March 30, 2016. This is a continuing program.

The Governor's School 2014-15 grant of \$3,580 represents funding provided by the participating school districts and the Virginia Department of Education for qualifying students to participate in advanced studies in the areas of science, mathematics, and technology. This is a revision to the original award allocation, and will be fully reimbursed by state and local funds. This is a continuing program.

Recommended Action:

We recommend that Council concur with this report of the School Board and adopt the attached budget ordinance to establish revenue estimates and to appropriate funding as outlined.



Barbara A. Dameron
Director of Finance

Distribution: Council Appointed Officers
Rita D. Bishop, Superintendent, RCPS
P. Steve Barnett, Assistant Superintendent for Operations, RCPS
Kathleen M. Jackson, Chief Financial Officer, RCPS



IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to appropriate funding from the Federal Government and the Commonwealth grants and the Schools General Fund for various educational programs, amending and reordaining certain sections of the 2015-2016 School Grant Fund Appropriations, and dispensing with the second reading by title of this ordinance.

BE IT ORDAINED by the Council of the City of Roanoke that the following sections of the 2015-2016 School Grant Fund Appropriations be, and the same are hereby, amended and reordained to read and provide as follows:

Appropriations

Food Services Personnel	321 - 320 - 0000 - 0410 - 168K - 65100 - 41182 - 2 - 00	\$ 300
Food	321 - 320 - 0000 - 0410 - 168K - 65100 - 46602 - 2 - 00	23,382
Food Service Supplies	321 - 320 - 0000 - 0410 - 168K - 65100 - 46603 - 2 - 00	1,968
Administrative	321 - 320 - 0000 - 0410 - 168K - 65100 - 41182 - 2 - 00	2,431
Food Services Personnel	321 - 320 - 0000 - 0050 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0050 - 168K - 65100 - 46602 - 2 - 00	34,476
Food Service Supplies	321 - 320 - 0000 - 0050 - 168K - 65100 - 46603 - 2 - 00	2,723
Administrative	321 - 320 - 0000 - 0050 - 168K - 65100 - 41182 - 2 - 00	3,906
Food Services Personnel	321 - 320 - 0000 - 0300 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0300 - 168K - 65100 - 46602 - 2 - 00	15,820
Food Service Supplies	321 - 320 - 0000 - 0300 - 168K - 65100 - 46603 - 2 - 00	1,260
Administrative	321 - 320 - 0000 - 0300 - 168K - 65100 - 41182 - 2 - 00	1,620
Food Services Personnel	321 - 320 - 0000 - 0420 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0420 - 168K - 65100 - 46602 - 2 - 00	18,457
Food Service Supplies	321 - 320 - 0000 - 0420 - 168K - 65100 - 46603 - 2 - 00	1,706
Administrative	321 - 320 - 0000 - 0420 - 168K - 65100 - 41182 - 2 - 00	1,703
Food Services Personnel	321 - 320 - 0000 - 0340 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0340 - 168K - 65100 - 46602 - 2 - 00	14,925
Food Service Supplies	321 - 320 - 0000 - 0340 - 168K - 65100 - 46603 - 2 - 00	1,420
Administrative	321 - 320 - 0000 - 0340 - 168K - 65100 - 41182 - 2 - 00	1,279
Food Services Personnel	321 - 320 - 0000 - 0370 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0370 - 168K - 65100 - 46602 - 2 - 00	29,651
Food Service Supplies	321 - 320 - 0000 - 0370 - 168K - 65100 - 46603 - 2 - 00	2,324
Administrative	321 - 320 - 0000 - 0370 - 168K - 65100 - 41182 - 2 - 00	3,334
Food Services Personnel	321 - 320 - 0000 - 0060 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0060 - 168K - 65100 - 46602 - 2 - 00	14,676
Food Service Supplies	321 - 320 - 0000 - 0060 - 168K - 65100 - 46603 - 2 - 00	1,216
Administrative	321 - 320 - 0000 - 0060 - 168K - 65100 - 41182 - 2 - 00	1,433
Food Services Personnel	321 - 320 - 0000 - 0330 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0330 - 168K - 65100 - 46602 - 2 - 00	22,188
Food Service Supplies	321 - 320 - 0000 - 0330 - 168K - 65100 - 46603 - 2 - 00	1,933
Administrative	321 - 320 - 0000 - 0330 - 168K - 65100 - 41182 - 2 - 00	2,226
Food Services Personnel	321 - 320 - 0000 - 0220 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0220 - 168K - 65100 - 46602 - 2 - 00	24,427
Food Service Supplies	321 - 320 - 0000 - 0220 - 168K - 65100 - 46603 - 2 - 00	1,944
Administrative	321 - 320 - 0000 - 0220 - 168K - 65100 - 41182 - 2 - 00	1,768
Food Services Personnel	321 - 320 - 0000 - 0430 - 168K - 65100 - 41182 - 2 - 00	300
Food	321 - 320 - 0000 - 0430 - 168K - 65100 - 46602 - 2 - 00	29,153
Food Service Supplies	321 - 320 - 0000 - 0430 - 168K - 65100 - 46603 - 2 - 00	2,465
Administrative	321 - 320 - 0000 - 0430 - 168K - 65100 - 41182 - 2 - 00	5,305
Food Services Personnel	321 - 320 - 0000 - 0350 - 168K - 65100 - 41182 - 2 - 00	300

Food	321 - 320 - 0000 - 0350 - 168K - 65100 - 46602 - 2 - 00	41,292
Food Service Supplies	321 - 320 - 0000 - 0350 - 168K - 65100 - 46603 - 2 - 00	3,443
Administrative	321 - 320 - 0000 - 0350 - 168K - 65100 - 41182 - 2 - 00	1,209
Teachers	302 - 110 - 1060 - 0050 - 332K - 61100 - 41121 - 0 - 06	157,500
Substitutes	302 - 110 - 1060 - 0050 - 332K - 61100 - 41021 - 0 - 06	2,250
Site Manager	302 - 110 - 1060 - 0050 - 332K - 61100 - 41124 - 0 - 06	8,100
Social Security	302 - 110 - 1060 - 0050 - 332K - 61100 - 42201 - 0 - 06	12,840
VRS	302 - 110 - 1060 - 0050 - 332K - 61100 - 42202 - 0 - 06	9,993
Retiree Health Credit	302 - 110 - 1060 - 0050 - 332K - 61100 - 42200 - 0 - 06	1,164
Group Life Insurance	302 - 110 - 1060 - 0050 - 332K - 61100 - 42205 - 0 - 06	1,332
Contracted Transportation (Buses)	302 - 110 - 1060 - 0050 - 332K - 61100 - 43343 - 0 - 06	100,076
Postage	302 - 110 - 1060 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 1060 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Teachers	302 - 110 - 0420 - 0050 - 332K - 61100 - 41121 - 0 - 06	131,250
Substitutes	302 - 110 - 0420 - 0050 - 332K - 61100 - 41021 - 0 - 06	3,750
Site Manager	302 - 110 - 0420 - 0050 - 332K - 61100 - 41124 - 0 - 06	13,500
Social Security	302 - 110 - 0420 - 0050 - 332K - 61100 - 42201 - 0 - 06	11,360
VRS	302 - 110 - 0420 - 0050 - 332K - 61100 - 42202 - 0 - 06	5,304
Retiree Health Credit	302 - 110 - 0420 - 0050 - 332K - 61100 - 42200 - 0 - 06	618
Group Life Insurance	302 - 110 - 0420 - 0050 - 332K - 61100 - 42205 - 0 - 06	707
Contracted Transportation (Buses)	302 - 110 - 0420 - 0050 - 332K - 61100 - 43343 - 0 - 06	88,961
Postage	302 - 110 - 0420 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 0420 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Teachers	302 - 110 - 0350 - 0050 - 332K - 61100 - 41121 - 0 - 06	157,500
Substitutes	302 - 110 - 0350 - 0050 - 332K - 61100 - 41021 - 0 - 06	2,250
Site Manager	302 - 110 - 0350 - 0050 - 332K - 61100 - 41124 - 0 - 06	8,100
Social Security	302 - 110 - 0350 - 0050 - 332K - 61100 - 42201 - 0 - 06	8,560
VRS	302 - 110 - 0350 - 0050 - 332K - 61100 - 42202 - 0 - 06	9,993
Retiree Health Credit	302 - 110 - 0350 - 0050 - 332K - 61100 - 42200 - 0 - 06	1,164
Group Life Insurance	302 - 110 - 0350 - 0050 - 332K - 61100 - 42205 - 0 - 06	1,332
Contracted Transportation (Buses)	302 - 110 - 0350 - 0050 - 332K - 61100 - 43343 - 0 - 06	88,961
Postage	302 - 110 - 0350 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 0350 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Teachers	302 - 110 - 0300 - 0050 - 332K - 61100 - 41121 - 0 - 06	90,769
Substitutes	302 - 110 - 0300 - 0050 - 332K - 61100 - 41021 - 0 - 06	2,250
Site Manager	302 - 110 - 0300 - 0050 - 332K - 61100 - 41124 - 0 - 06	8,100
Social Security	302 - 110 - 0300 - 0050 - 332K - 61100 - 42201 - 0 - 06	12,840
VRS	302 - 110 - 0300 - 0050 - 332K - 61100 - 42202 - 0 - 06	9,993
Retiree Health Credit	302 - 110 - 0300 - 0050 - 332K - 61100 - 42200 - 0 - 06	1,164
Group Life Insurance	302 - 110 - 0300 - 0050 - 332K - 61100 - 42205 - 0 - 06	1,332
Contracted Transportation (Buses)	302 - 110 - 0300 - 0050 - 332K - 61100 - 43343 - 0 - 06	55,575
Postage	302 - 110 - 0300 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 0300 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Teachers	302 - 110 - 0340 - 0050 - 332K - 61100 - 41121 - 0 - 06	90,769
Substitutes	302 - 110 - 0340 - 0050 - 332K - 61100 - 41021 - 0 - 06	2,250
Site Manager	302 - 110 - 0340 - 0050 - 332K - 61100 - 41124 - 0 - 06	8,100
Social Security	302 - 110 - 0340 - 0050 - 332K - 61100 - 42201 - 0 - 06	12,840
VRS	302 - 110 - 0340 - 0050 - 332K - 61100 - 42202 - 0 - 06	9,993
Retiree Health Credit	302 - 110 - 0340 - 0050 - 332K - 61100 - 42200 - 0 - 06	1,164
Group Life Insurance	302 - 110 - 0340 - 0050 - 332K - 61100 - 42205 - 0 - 06	1,332
Contracted Transportation (Buses)	302 - 110 - 0340 - 0050 - 332K - 61100 - 43343 - 0 - 06	50,017
Postage	302 - 110 - 0340 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 0340 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Teachers	302 - 110 - 0220 - 0050 - 332K - 61100 - 41121 - 0 - 06	90,769
Substitutes	302 - 110 - 0220 - 0050 - 332K - 61100 - 41021 - 0 - 06	2,250
Site Manager	302 - 110 - 0220 - 0050 - 332K - 61100 - 41124 - 0 - 06	8,100
Social Security	302 - 110 - 0220 - 0050 - 332K - 61100 - 42201 - 0 - 06	12,840
VRS	302 - 110 - 0220 - 0050 - 332K - 61100 - 42202 - 0 - 06	9,993
Retiree Health Credit	302 - 110 - 0220 - 0050 - 332K - 61100 - 42200 - 0 - 06	1,164
Group Life Insurance	302 - 110 - 0220 - 0050 - 332K - 61100 - 42205 - 0 - 06	1,332
Contracted Transportation (Buses)	302 - 110 - 0220 - 0050 - 332K - 61100 - 43343 - 0 - 06	41,542
Postage	302 - 110 - 0220 - 0050 - 332K - 61100 - 45521 - 0 - 06	289
Printing	302 - 110 - 0220 - 0050 - 332K - 61100 - 44450 - 0 - 06	214
Equipment (Security camera system)	302 - 253 - 0000 - 0000 - 375K - 68300 - 48821 - 9 - 00	109,998
Technology Hardware Additions	302 - 280 - PASS- 0400 - 380K - 68200 - 48210 - 3 - 01	197,340
Instructional Material	302 - 280 - PASS- 0400 - 380K - 68200 - 46630 - 3 - 01	8,580
Payment of Joint Operations	302 - 191 - 0000 - 0553 - 325K - 61100 - 47701 - 9 - 02	41,642

Juvenile Detention	302 - 110 - 0000 - 1070 - 316K - 61100 - 41138 - 9 - 09	4,937
Retiree Health Credit	302 - 110 - 0000 - 1070 - 316K - 61100 - 42200 - 9 - 09	49
Social Security/FICA	302 - 110 - 0000 - 1070 - 316K - 61100 - 42201 - 9 - 09	378
Virginia Retirement System	302 - 110 - 0000 - 1070 - 316K - 61100 - 42202 - 9 - 09	395
Health/Dental Insurance	302 - 110 - 0000 - 1070 - 316K - 61100 - 42204 - 9 - 09	1,081
State Group Life Insurance	302 - 110 - 0000 - 1070 - 316K - 61100 - 42205 - 9 - 09	64
Professional Development	302 - 110 - 0000 - 1070 - 316K - 61100 - 45554 - 9 - 09	86,000
Mileage	302 - 110 - 0000 - 1070 - 316K - 61100 - 45551 - 9 - 09	(10,125)
Indirect Costs	302 - 110 - 0000 - 1070 - 316K - 61100 - 62000 - 9 - 09	(380)
Related Services	302 - 110 - 0000 - 1070 - 316K - 61100 - 43313 - 9 - 09	(2,280)
Instructional Supplies	302 - 110 - 0000 - 1070 - 316K - 61100 - 46601 - 9 - 09	(5,650)
Textbooks/Workbooks	302 - 110 - 0000 - 1070 - 316K - 61100 - 46613 - 3 - 09	(1,700)
Internet Services	302 - 110 - 0000 - 1070 - 316K - 61100 - 45523 - 9 - 09	2,200
Technology	302 - 110 - 0000 - 1070 - 316K - 61100 - 46650 - 3 - 09	(23,875)
Utilities	302 - 180 - 0000 - 1170 - 313J - 64200 - 45511 - 3 - 04	3,580

Revenues

Federal Grant Receipts	321 - 000 - 0000 - 0000 - 168K - 00000 - 38555 - 0 - 00	\$ 320,363
State Grant Receipts	302 - 000 - 0000 - 0000 - 332K - 00000 - 32421 - 0 - 00	1,356,061
State Grant Receipts	302 - 000 - 0000 - 0000 - 375K - 00000 - 32400 - 0 - 00	87,998
Local Match	302 - 000 - 0000 - 0000 - 375K - 00000 - 72000 - 0 - 00	22,000
State Grant Receipts	302 - 280 - PASS - 0400 - 380K - 00000 - 32366 - 0 - 00	171,600
Local Match	302 - 280 - PASS - 0400 - 380K - 00000 - 72000 - 0 - 00	34,320
State Grant Receipts	302 - 000 - 0000 - 0553 - 325K - 00000 - 32272 - 0 - 00	41,642
State Grant Receipts	302 - 000 - 0000 - 0000 - 316K - 00000 - 32220 - 0 - 00	51,094
Commonwealth of VA	302 - 000 - 0000 - 1170 - 313J - 0000 - 32229 - 0 - 00	21,993
Local Contribution	302 - 000 - 0000 - 1170 - 313J - 0000 - 33802 - 0 - 00	4,650
Other Finance Sources Local Match	302 - 000 - LMAT - 1170 - 313J - 00000 - 72000 - 0 - 00	(23,063)

Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: Application by Franklin Road Properties, LLC, to rezone property located at 3302 Franklin Road, S.W., bearing Official Tax No. 1300121 from Residential Single-Family District (R-12) to Mixed Use District (MX) with a condition

Recommendation

The Planning Commission held a public hearing on Monday, October 12, 2015. By a vote of 3 - 1 the Commission recommended approval of the rezoning request, finding that the Amended Application No.1 is consistent with the overall goals of the City's Comprehensive Plan, *Franklin Road/Colonial Avenue Area Plan*, and Zoning Ordinance as the subject property will be developed in a manner compatible with the surrounding area.

Application Information

Request:	Rezoning
Owner:	Scott Strelow, Franklin Road Properties, LLC
Applicant:	N/A
Authorized Agent:	Maryellen Goodlatte, Glenn Feldmann Darby & Goodlatte
City Staff Person:	Katharine Gray, Land Use and Urban Design Planner
Site Address/Location:	3302 Franklin Road, S.W.
Official Tax Nos.:	1300121
Site Area:	Approximately .3244 acres
Existing Zoning:	R-12, Residential Single-Family District
Proposed Zoning:	MX, Mixed Use District with a condition
Existing Land Use:	Vacant
Proposed Land Use:	Offsite Parking
Neighborhood Plan:	Franklin Road/Colonial Avenue Area Plan
Specified Future Land Use:	single-family medium density
Filing Date:	Original Application: August 31, 2015 Amended Application No.1: September 18, 2015

Background

Franklin Road Properties, LLC, owns property on the eastern side of Franklin Road, S.W., north of Avenham Avenue, S.W., identified as Official Tax Nos 1300121 and 1300101. These two lots were created in 2015, when the existing parent parcel was subdivided. The southerly 0.3244 acre portion of the property (TN 13100121) is the subject of the rezoning request. The owner wishes to create an offsite parking area on the parcel to serve the two adjacent medical facilities on Franklin Road to address the stated lack of adequate on-site parking. An off-site parking area is not permitted in the current R-12 zoning district.

In August 2015, the owner filed a petition to rezone the parcel from R-12 to MX, with a condition to develop the property in compliance with the proffered development plan. The proposed MX zoning district matches that off the adjacent medical facilities.

Amended Application No.1 revised the development plan buffer along the rear property line to include additional plantings above those required in the zoning ordinance and updated the address of the property.

Conditions Proffered by the Applicant

The applicant hereby requests that the following proffered conditions be adopted as it pertains to Official Tax No. 1300121.

- 1) The property shall be developed in substantial conformity with the Development Plan prepared by Lumsden Associates, P.C. dated July 8, 2015 and revised September 17, 2015 and attached hereto as Exhibit A ("Development Plan") subject to those changes which may be required by the City of Roanoke during development plan review.

Considerations

Surrounding Zoning and Land Use:

	Zoning District	Land Use
North	R-12, Residential Single-Family District	Vacant
South	MX, Mixed Use District	Medical clinic
East	R-12, Residential Single-Family District	Single-family detached dwellings
West	MXPUD, Mixed Use Planned Unit Development District	Vacant buffer strip and single-family detached dwellings

Compliance with the Zoning Ordinance:

The purpose of the MX District is to accommodate residential uses, office uses, and support services within the same district. The intent of the district is that no retail sales uses be permitted and that the district facilitates a harmonious mixture of office and residential uses. The regulations of the district are intended to protect the character and scale of such a mixed-use development pattern by permitting low-intensity development at a scale that recognizes and respects residential patterns of development.

The proffered development plan shows landscaping/buffering that exceeds that which would otherwise be required by the zoning ordinance. In particular, the plan shows additional evergreen trees along the rear property line, between the proposed parking area and the abutting residential properties. The layout of the proposed parking area conforms to the standards of the zoning ordinance and is subject to further evaluation as part of the development review process.

Conformity with the Comprehensive Plan and Neighborhood Plan:

Both *Vision 2001-2020* and the *Franklin Road/Colonial Avenue Area Plan* encourage commercial areas to accommodate businesses with aesthetic and functional compatibility with adjacent residential areas. Franklin Road, S.W. is one of Roanoke's busiest commercial streets including large scale and general commercial areas. This property is located at the northern end of such an area. From that point north, Franklin Road enters a narrow valley with steep undeveloped property on each side of the road rising to residential areas above before opening back to more commercial uses.

The two medical clinics, with a stated need for additional parking, would benefit from the proposed offsite parking lot on the parcel. The offsite parking, as proposed in the development plan, would alleviate some of the parking constraints on the business properties while protecting the adjacent residential properties from undue aesthetic or functional burdens.

Relevant Vision 2001-2020 policies:

- *ED P6. Commercial development.* Roanoke will encourage commercial development in appropriate areas of Roanoke to serve the needs of citizens and visitors.

Relevant Franklin Road/Colonial Avenue Area Plan policies:

- Economic Development Policies
 - Commercial Corridors: Commercial areas should accommodate competitive businesses that have aesthetic and functional compatibility with adjoining residential areas.

- Infrastructure Policies
 - Stormwater Drainage: Stormwater runoff should be mitigated as much as possible through improvements that are consistent with the character of the neighborhood.

Rezoning to MX with a proffered development plan for offsite parking allows for existing businesses along Franklin Road to expand their needed parking while protecting the adjacent residential properties through an expansive buffer area that exceeds the requirements in the zoning ordinance.

Public Comments:

One neighbor, Mr. Chappell at 3277 White Oak Road, S.W., called to state that he is concerned about buffering and drainage and is opposed to the parking. He later started a public poll against the rezoning through the online service Change.org, each commissioner was included in the multiple postings. Mr. Chappell also submitted a written narrative outlining a number of reasons why the proposed project would have a negative impact on the neighborhood and later sent a series of photographs illustrating concerns. These documents have been forwarded to each commissioner and are included as part of the file for the application. Many of the concerns were related to removal of trees, buffering/screening and water quality impacts. Concern with security, criminal activity and property value impacts were also discussed.

Karla Cockfield, 3281 White Oak Road, wrote to state that she is opposed to the rezoning. Her concerns are loss of natural habitat on Franklin Road, increased drainage problems, loss of property value, loss of residential privacy, increased access to their property from Franklin Road, increased potential of criminal access to their property, and increased traffic noise from Franklin Road. This letter was forwarded to each Commissioner as it arrived after the Planning Commission Agenda Package had been completed and posted.

The applicant spoke with surrounding property owners and revised their application to increase the plantings in the buffer adjacent to the single family residential properties to the east. The landscaping shown on the proffered development plan exceeds that which would otherwise be required by the zoning ordinance. The landscaping that is proposed on this project is more substantial than that found on other properties along Franklin Road. Those properties were developed at a time when little landscaping or buffering was required.

Planning Staff spoke with staff from the Stormwater Division regarding drainage issues in the vicinity of the property. The Stormwater Division had no comments on the project, provided that the proposed culvert extension has a diameter (capacity) equal to or greater in diameter than the existing upstream system and the proposed manhole top is at the same elevation as the proposed finish grade. These items would be addressed in detail during the development review process.

Planning Commission Work Session:

The following items were discussed in the Planning Commission Work Session for compliance with City policy and ordinances and sent to the applicant as recommended changes to address.

- The parcel has been given an address, 3302 Franklin Road SW, and this should be reflected in the application.
- Remove "comprehensive" from the proffer statement so that it reads "...during development plan review" to address how this application may be reviewed in the future

The applicant subsequently submitted Amended Application No.1 that addressed all of the comments.

Planning Commission Public Hearing:

Linda Cumins, Roanoke County, stated that she owns the office building next to Vistar and that they have been good neighbors. She then stated that there is not enough parking and they need more handicap parking spots.

John Chappell, 3277 White Oak Rd., S.W., stated that he had a number of concerns including the waterway from stormwater and the natural spring, decreasing home values, decreasing visual privacy, inability of the City to enforce the buffer condition as proffered, losing greenspace, and the multiple abandoned buildings and parking lots along Franklin Road.

Scott Stelow, Physician at Vistar Eye Center, stated that the practice has been a part of the neighborhood for 35 years and that the safety and security of patients and staff is their primary concern. Their other concern is the overflow parking problem into the residential neighborhood. He stated that his location is a gateway and they are proposing a solution that preserves the neighborhood character with a well buffered area nearest the residential property owners.

Frank Smith, 3021 Rosalind Ave., S.W., stated that he has been actively involved in the neighborhood for many years and Mr. Stelow approached him about this issue four years ago. He stated that the proffered plan has gone above and beyond what is required and is a good addition.

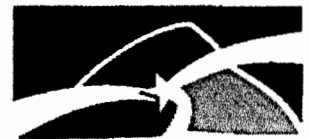
Chad A. Van Hyning /tmc

Chad A. Van Hyning, Chair
City Planning Commission

cc: Chris Morrill, City Manager
R. Brian Townsend, Assistant City Manager
Chris Chittum, Director of Planning Building & Development
Ian D. Shaw, Planning Commission Agent
Daniel J. Callaghan, City Attorney
Steven J. Talevi, Assistant City Attorney
Scott Strelow, Franklin Road Properties, LLC
Maryellen Goodlatte, Glenn Feldmann Darby & Goodlatte

Zoning Amendment

Application



ROANOKE

Department of Planning, Building and Development
Room 166, Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Phone: (540) 853-1730 Fax: (540) 853-1230

SEP 18 2015

CITY OF ROANOKE
PLANNING BUILDING & DEVELOPMENT

[Click Here to Print](#)

Date: September 18, 2015

Submittal Number: Amended Application No. 1

Rezone (Select all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Rezoning, Not Otherwise Listed | <input type="checkbox"/> Amendment of Proffered Conditions |
| <input checked="" type="checkbox"/> Rezoning, Conditional | <input type="checkbox"/> Amendment of Planned Unit Development Plan |
| <input type="checkbox"/> Rezoning to Planned Unit Development | <input type="checkbox"/> Amendment of Comprehensive Sign Overlay District |
| <input type="checkbox"/> Establishment of Comprehensive Sign Overlay District | |

Property Information

Address: 3302 Franklin Road, Roanoke, Virginia 24014

Official Tax No(s): 1300121

Existing Base Zoning:

(If multiple zones, please manually enter all districts.)

R-12, Residential Single-Family

☐ With Conditions

☒ Without Conditions

Ordinance No(s). for Existing Conditions (If applicable):

Requested Zoning: MX, Mixed Use

☒ With Conditions

☐ Without Conditions

Proposed
Land Use:

Parking for Tax Parcels 1300120 & 1300116

Property Owner Information

Name: Franklin Road Properties, LLC

Phone Number: +1 (540) 344-6770

Address: 3320 Franklin Road, Roanoke, VA 24014

E-Mail: scottstrelow@aol.com

Property Owner's Signature

Applicant Information (If different from owner)

Name:

Phone Number:

Address:

E-Mail:

Applicant's Signature:

Authorized Agent Information (If applicable)

Name: Maryellen F. Goodlatte, Esq.

Phone Number: +1 (540) 224-8000

Address: Glenn Feldmann, et al., P. O. Box 2887, Roanoke, VA 24001-2887

E-Mail: mgoodlatte@glennfeldmann.com

Authorized Agent's Signature:

Zoning Amendment Application Checklist



The following must be submitted for all applications:

- ☒ Completed application form and checklist.
- ☒ Written narrative explaining the reason for the request.
- ☐ Metes and bounds description, if applicable.
- ☒ Filing fee.

For a rezoning or other use listed, the following must also be submitted:

- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures.

For a conditional rezoning, the following must also be submitted:

- ☒ Written proffers. See the City's Guide to Proffered Conditions.
- ☒ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures. Please label as 'development plan' if proffered.

For a planned unit development, the following must also be submitted:

- ☐ Development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.

For a comprehensive sign overlay district, the following must be submitted:

- ☐ Comprehensive signage plan meeting the requirements of Section 36.2-336(d)(2) of the City's Zoning Ordinance.

For an amendment of proffered conditions, the following must also be submitted:

- ☐ Amended development or concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures, if applicable.
- ☐ Written proffers to be amended. See the City's Guide to Proffered Conditions.
- ☐ Copy of previously adopted Ordinance.

For a planned unit development amendment, the following must also be submitted:

- ☐ Amended development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a comprehensive sign overlay amendment, the following must also be submitted:

- ☐ Amended comprehensive signage plan meeting the requirements of Section 36.2-336(d) of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a proposal that requires a traffic impact study be submitted to the City, the following must also be submitted:

- ☐ A Traffic Impact Study in compliance with Appendix B-2(e) of the City's Zoning Ordinance.

For a proposal that requires a traffic impact analysis be submitted to VDOT, the following must also be submitted:

- ☐ Cover sheet.
- ☐ Traffic impact analysis.
- ☐ Concept plan.
- ☐ Proffered conditions, if applicable.
- ☐ Required fee.

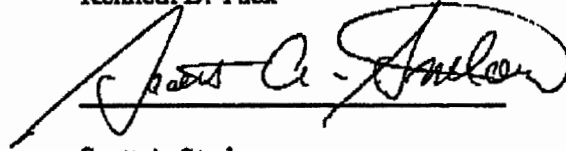
*An electronic copy of this application and checklist can be found at www.roanokeva.gov/pbd by selecting 'Planning Commission' under 'Boards and Commissions'. A complete packet must be submitted each time an application is amended, unless otherwise specified by staff.

August 25, 2015

We are the sole managers of Franklin Road Properties, LLC (the "Company"). This is to confirm that Scott A. Strelow, as Manager, is authorized to execute such documents as may be necessary or desirable to seek the rezoning of property owned by the Company in the City of Roanoke, Virginia. A true copy of the operating agreement of the Company is attached hereto.

A handwritten signature in black ink, appearing to read "Kenneth D. Tuck", written over a horizontal line.

Kenneth D. Tuck

A handwritten signature in black ink, appearing to read "Scott A. Strelow", written over a horizontal line.

Scott A. Strelow

**OPERATING AGREEMENT
OF
FRANKLIN ROAD PROPERTIES, LLC**

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THIS OPERATING AGREEMENT, dated as of December 19, 2011, by and among the undersigned parties, who by their execution of this Operating Agreement have become members of FRANKLIN ROAD PROPERTIES, LLC, a Virginia limited liability company (the "Company"), provides as follows:

RECITALS:

The Company was organized as a limited liability company under the laws of the Commonwealth of Virginia on December 19, 2011. The undersigned parties wish to enter into this Operating Agreement in order to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

1.01 **Definitions.** The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Act" shall mean the Virginia Limited Liability Company Act, Virginia Code Ann. §13.1-1000 et seq., as amended and in force from time to time.

(b) "Articles" shall mean the articles of organization of the Company, as amended and in force from time to time.

(c) "Capital Account" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made.

(e) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

- (f) **"Company"** shall refer to Franklin Road Properties, LLC.
- (g) **"Entity"** shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.
- (h) **"Initial Capital Contribution"** shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.
- (i) **"Manager"** shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.
- (j) **"Member"** shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.
- (k) **"Membership Interest"** shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to such Member's Capital Account divided by the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.
- (l) **"Operating Agreement"** shall mean this Operating Agreement, as originally executed and as amended from time to time.
- (m) **"Person"** shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

ARTICLE II

PURPOSE AND POWERS OF COMPANY

2.01 Purpose. The purposes of the Company shall be to:

- (a) Acquire, own, buy, sell, invest in, trade, manage, finance, refinance, exchange, or otherwise dispose of stocks, securities, partnership interests, CDs, mutual funds, commodities, and any and all investments whatsoever, that the Manager(s) may from time to time deem to be in the best interests of the Company;
- (b) Own, acquire, manage, develop, operate, buy, sell, exchange,

finance, refinance, and otherwise deal with real estate, personal property, and any type of business, as the Manager(s) may from time to time deem to be in the best interests of the Company; and

(c) Engage in such other activities as are related or incidental to the foregoing purposes.

2.02 Powers. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not proscribed by the Articles.

ARTICLE III

MEMBERSHIP INTERESTS AND PRINCIPAL OFFICE

3.01 Names and Membership Interests. The names, addresses, and Membership Interests of the Initial Members are as follows:

<u>Name and Address</u>	<u>Membership Interest</u>
Kenneth D. Tuck 3320 Franklin Road Roanoke, VA 24014	50%
Scott A. Strelow 3320 Franklin Road Roanoke, VA 24014	50%

3.02 Principal Office. The principal office of the Company shall initially be at 3320 Franklin Road, Roanoke, Virginia 24014. The principal office may be changed from time to time by the Manager(s).

ARTICLE IV

VOTING POWERS, MEETINGS OF MEMBERS

4.01 Voting Powers. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

4.02 Actions Requiring Approval of Members.

(a) Notwithstanding any other provision of this Operating Agreement;

the approval of the Members shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles or this Operating Agreement in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Manager(s) as provided in Article V hereof.

(iii) Taking any action which would make it impossible to carry on the ordinary business of the Company.

(iv) Confessing a judgment against the Company in excess of \$5,000.

(v) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

(vi) Loaning Company funds in excess of \$25,000 or for a term in excess of one year to any Member.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the unanimous vote of the Members shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters which require the approval or consent of the Members.

4.03 Action by Members. In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article.

4.04 Annual Meeting. Unless waived by the Manager(s) or the Members, the annual meeting of the Members shall be held on the first Monday in December of each year at 10:00 am or at such other time as shall be determined by the Manager(s) for the purpose of the transaction of such business as may come properly before the meeting.

4.05 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Manager(s), and shall be called by the Manager(s) at the request of any two Members, or such lesser number of Members as are Members of the Company.

4.06 Place of Meeting. The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the Commonwealth of Virginia, is designated by the Manager(s).

4.07 Notice of Meetings. Written notice stating the place, day and hour of any

meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Manager(s), to each Member, unless the Act or the Articles require different notice.

4.08 Conduct of Meetings. All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Member designated by the Manager(s). The chairperson of any meeting of the Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

4.09 Participation by Telephone or Similar Communications. Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.10 Waiver of Notice. When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.11 Action by Written Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. Such consent or consents shall be filed with the minutes of the meetings of the Members. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

ARTICLE V

MANAGERS

5.01 Powers of Managers. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by, one or more Manager(s). The powers so exercised shall include but not be limited to the following:

- (a) Entering into, making and performing contracts, deeds, leases, loan

agreements, mortgages, deeds of trust, security agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

(c) Collecting funds due to the Company.

(d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.

(e) To the extent that funds of the Company are available therefor, paying debts and obligations of the Company.

(f) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.

(g) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Manager(s) shall determine, notwithstanding the fact that the Manager(s) or any Member may have a financial interest in such firms or corporations.

(h) Making elections available to the Company under the Code.

(i) Registering the Company as a tax shelter with the Secretary of the Treasury and furnishing to such Secretary lists of investors in the Company, if required pursuant to applicable provisions of the Code.

(j) Obtaining general liability, property and other insurance for the Company, as the Manager(s) deem proper.

(k) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.

(l) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

5.02 Election, Etc. of Managers.

(a) The Members hereby unanimously elect Kenneth D. Tuck and Scott A. Strelow, as the initial Managers of the Company, to serve until the first annual meeting of the Members or until their respective successors shall be duly elected and qualified.

(b) The Members shall elect one or more Persons as Managers at each annual meeting of the Company to serve until the next annual meeting of the Company or until their respective successors are duly elected and qualified. In the event that no annual meeting be held for one or more consecutive years, the Person(s) holding office as Manager(s) shall remain in office until removed or replaced as set forth herein. In addition, if any Person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other Persons then serve as Managers and the Members determine not to fill such vacancy. A Person may be removed as a Manager by the Members with or without cause at any time. A Manager may, but shall not be required to, be elected from among the Members. A Manager may be a natural person or an Entity. Notwithstanding any of the foregoing provisions, the rights of the Members to elect and remove Managers shall be subject to the restrictions set forth in Section 5.03 hereof.

5.03 Appointment of Managers. For so long as Kenneth D. Tuck and Scott A. Strelow (the "Founding Members") are Members and have not consented otherwise in writing, the Founding Members, or such Person(s) whom they designate by mutual agreement, shall be the sole and exclusive Managers of the Company. If either of the Founding Members ceases to be a Member, and the other Founding Member continues as a Member, the Founding Member who continues to be a Member, and his designee, if any, shall be the sole and exclusive Managers of the Company. At such time as all of the Founding Members have ceased to be Members, the Managers shall be elected according to the procedure set forth above Company. At such time as all of the Founding Members have ceased to be Members, the covenants contained in this Section shall terminate.

5.04 Action by Managers. Unless otherwise expressly provided by the Act, the Articles, or the terms of this Operating Agreement, the vote, approval or consent of a majority of the Managers, determined on a per capita basis, shall be necessary and sufficient for the Managers to take any action on behalf of the Company that the Managers are authorized to take pursuant to the Act, the Articles or this Operating Agreement.

5.05 Execution of Documents and Other Actions. The Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in Section 5.04 hereof.

5.06 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.

5.07 Reliance by Other Persons. Any Person dealing with the Company, other than a Member, may rely on the authority of a particular Manager or Managers in taking any action in the name of the Company, if such Manager or Managers provide to such Person a copy of the applicable provision of this Operating Agreement and/or the resolution or written consent of the Managers or Members granting such authority, certified in writing by such Manager or Managers to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.08 Manager's Expenses and Fees. A Manager shall be entitled, but not required, to receive a reasonable salary for services rendered on behalf of the Company or in his capacity as a Manager. The amount of such salary shall be determined by the Managers and consented to by the Members, which consent shall not be unreasonably withheld. The Company shall reimburse any Manager for reasonable out-of-pocket expenses which were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.09 Competition. During the existence of the Company, the Members and Managers shall devote such time to the business of the Company as may reasonably be required to conduct its business in an efficient and profitable manner. The Members and Managers, for their own account and for the account of others, may engage in business ventures which may compete with the business of the Company. Each Member hereby expressly consents to the continued and future ownership and operation by the other Members or the Managers of such business ventures and waives any claim for damages or otherwise, or rights to participate therein or with respect to the operation and profits or losses thereof.

5.10 Indemnification. The Company shall indemnify each Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Manager(s) may be entitled. The Manager(s) may, upon the approval of the Members, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.

5.11 Liability of Managers. So long as the Managers act in good faith with respect to the conduct of the business and affairs of the Company, no Manager shall be

liable or accountable to the Company or to any of the Members, in damages or otherwise, for any error of judgment, for any mistake of fact or of law, or for any other act or thing which he may do or refrain from doing in connection with the business and affairs of the Company, except for willful misconduct or gross negligence or breach of fiduciary duty, and further except for breaches of contractual obligations or agreements between the Manager(s) and the Company.

ARTICLE VI

CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

6.01 Initial Capital Contributions. Each Member, upon the execution of this Operating Agreement, shall make as an Initial Capital Contribution the amount shown on Exhibit A, which is attached hereto. The Initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be determined by the Members.

6.02 Additional Capital Contributions. No Member shall be required to make any Capital Contribution in addition to his Initial Capital Contribution. The Members may make additional Capital Contributions to the Company only if such additional Capital Contributions are made pro rata by all the Members or all the Members consent in writing to any non-pro rata contribution. The fair market value of any property other than cash or widely traded securities to be contributed as an additional Capital Contribution shall be (a) agreed upon by all of the Members before contribution, or (b) determined by a disinterested appraiser selected by the Manager(s).

6.03 Interests and Return of Capital Contribution. No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution.

6.04 Capital Accounts. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement, such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) In the event any interest in the Company is transferred in accordance with the terms of this Operating Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an independent M.A.I. appraiser actively engaged in appraisal work in the area where such property is located and selected by the Managers, and otherwise by the certified public accountant or accountants then serving the Company.

(e) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.

6.05 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Manager(s); provided that the terms of such borrowing shall be commercially reasonable. The Company may pledge its assets to secure such borrowing. Loans or advances by any Member to the Company shall not be considered Capital Contributions and shall not increase the Capital Account balance of the lending or advancing Member.

6.06 Effect of Sale or Exchange. In the event of a permitted sale or other transfer of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

6.07 Distributions. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the Manager(s). All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

6.08 Allocations. Except as otherwise provided in Section 6.09 hereof, all

Items of income, gain, loss, deduction and credit, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

6.09 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

ARTICLE VII

RECORDS, REPORTS, ETC.

7.01 Records. The Company shall maintain and make available to the Members its records to the extent provided in the Act or by law.

7.02 Financial and Operating Statements and Tax Returns. Within seventy-five (75) days from the close of each fiscal year of the Company, the Manager(s) shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Manager(s) also shall cause to be prepared and filed all federal, state and local income tax returns required of the Company for each fiscal year.

7.03 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Manager(s), or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Manager(s). All withdrawals from any such bank accounts or investments established by the Manager(s) hereunder shall be made on such signature or signatures as may be authorized from time to time by the Manager(s). Any account opened by the Manager(s) for the Company shall not be commingled with other funds of the Manager(s) or interested persons.

7.04 Power of Attorney.

(a) Each Member does hereby irrevocably constitute and appoint the Manager(s) serving in office from time to time, and each of them, as such Member's true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(i) Any certificate or other instrument which may be required to be filed by the Company or the Members under the laws of the Commonwealth of Virginia or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Managers deem any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments which may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Manager(s) pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the Manager or Managers, as attorney-in-fact appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

ARTICLE VIII

ASSIGNMENT; RESIGNATION

8.01 **Assignment Generally.** Except as provided in Section 8.02, 8.08, and 8.09 of this Operating Agreement, each Member hereby covenants and agrees that he will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such interest to the Company.

(a) The Company shall have the right to accept the offer at any time during the thirty (30) days following the date on which the written offer is delivered to the Company. The consent of all the Managers shall be required to authorize the exercise of such option by the Company. Thereafter, each Member shall have an option (pro-rata if more than one by interest) to acquire the offered interest for an

additional thirty (30) days, if not acquired by the Company.

(b) If neither the Company nor the Members accept the offer within the period, such interest may during the following sixty (60) days be disposed of free of the first refusal rights set forth in (a) above; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest; provided further that the purchaser shall first become a Member pursuant to this Operating Agreement; and provided further that any interest not so disposed of within the 60-day period shall thereafter remain subject to the first refusal rights set forth in (a) above.

(c) **NOTWITHSTANDING THE PRECEDING, NO ASSIGNEE OF A MEMBERSHIP INTEREST SHALL BECOME A MEMBER OF THE COMPANY EXCEPT UPON THE UNANIMOUS CONSENT OF THE NON-ASSIGNING MEMBERS IN THEIR SOLE DISCRETION, AND UPON SUCH ASSIGNEE EXECUTING A COUNTERPART OF THIS OPERATING AGREEMENT IN WHICH ASSIGNEE AGREES TO BE BOUND BY ALL PROVISIONS OF THIS OPERATING AGREEMENT.**

8.02 Purchase of Certain Membership Interests.

(a) If an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.02. For purposes of the foregoing, an "Option Event" shall mean the (i) the death, permitted resignation or dissolution of a Member, (ii) the occurrence of any event set forth in Section 9.01(c) hereof, if all or the requisite remaining Member consents to continue the business of the Company as provided therein, and (iii) the inability of a Member to pay its debts generally as they become due, or any assignment by a Member for the benefit of its creditors, or the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.

(b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the sixty (60) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the fair market value of such Membership Interest. The fair market value of the interest shall be the amount that the Option Member would receive in exchange for

his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their fair market value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the Company. The consent of all the Managers shall be required to authorize the exercise of such option by the Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.

(c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain his Membership Interest.

(d) The fair market value of the Option Member's Membership Interest shall be determined as expeditiously as possible by a disinterested appraiser mutually selected by the Option Member and the Company (the Company's selection being made by the Manager(s)). If the Option Member and the Company are unable to agree on a disinterested appraiser, then the Option Member and the Company shall each select a disinterested appraiser and if the disinterested appraisers selected are not able to agree as to the fair market value of the interest, then the two (2) disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value of the Option Member's Membership Interest by the appraiser or appraisers shall be conclusive and binding on all parties. The appraiser (or appraisers) shall arrive at the valuation using the valuation method or methods determined by the appraiser(s) to be appropriate in light of the condition of the Company and the industry at the time and any other pertinent factors. All costs of an appraiser mutually selected by the Option Member and the Company or the two (2) disinterested appraisers shall be shared equally by the Option Member and the Company. All costs of an individually selected appraiser shall be borne by the parties selecting such appraiser.

(e) If the option to purchase the Option Member's Membership Interest is exercised by the Company, then not later than thirty (30) days after the date on which the appraisal described above is complete (the "Appraisal Date"), the Company shall make a distribution of property (which may be cash or other assets of the Company) to the Option Member with a value equal in amount to the fair market value of the Option Member's Membership Interest; provided, however, that at the election of the Company such distribution to the Option Member may be made in five (5) equal annual installments, the first of which shall be made on the thirtieth (30th) day after the Appraisal Date and one of which shall be made on the same date in each of the four (4) years thereafter, provided, further, however, that notwithstanding an election by the Company to make the distribution to the Option Member in five (5) equal annual installments, the Company may accelerate without penalty all of such installments at any time or any part of such installment at any time. If the Company elects to make distributions to the Option Member in five (5) equal annual installments as provided herein, the Company, in addition to such annual installments, shall pay the

Option Member additional amounts computed as if the Option Member were entitled to interest on the undistributed amount of the total distribution to which the Option Member is entitled hereunder at an annual rate equal to the annual Federal Mid-Term Rate in effect under Section 1274(d) of the Code, as determined on the 30th day after the Appraisal Date, which additional amounts, computed like interest, shall be due and payable on the same dates as the annual installments of the distribution payable to the Option Member hereunder. Any unpaid capital contributions of the Option Member and any damages occurring to the Company as a result of the Option Event shall be taken into account in determining the net amount due the Option Member at the closing, and any excess of such unpaid capital contributions or damages over the amount due at closing shall be netted against subsequent installment payments as they become due.

(f) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement, or similar restrictive agreement, the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase, with a proportionate reduction in the aggregate purchase price.

(g) In order to fund any obligations under this Operating Agreement, the Company or the Members may maintain such life insurance policies on the lives of one or more Members as the Members determine from time to time to be desirable.

8.03 Absolute Prohibition. Notwithstanding any other provision in this Article VIII, the Membership Interest of Member, in whole or in part, or any rights to distributions therefrom, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

8.04 Members Acquiring Membership Interest from Company. No Person, other than the initial Members, who acquires a Membership Interest from the Company shall be admitted as a Member of the Company, except upon the unanimous consent of the Members.

8.05 Resignation. No Member shall be entitled to resign from the Company except upon the unanimous written consent of the Members as

determined in their sole discretion. Any attempted resignation, without such consent, shall be of no force or effect.

8.06 Effect of Prohibited Action. Any transfer or other action in violation of this Article shall be void ab initio and of no force or effect whatsoever.

8.07 Rights of an Assignee. If an assignee of a Membership Interest is not admitted as a Member because of the failure to satisfy the requirements of Section 8.01 or 8.03 hereof, such assignee shall nevertheless be entitled to receive such distributions from the Company as the assigning Member would have been entitled to receive under Section 8.07 of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

8.08 Gift to Family Member. Notwithstanding Section 8.01, a Member shall not be required to offer to sell his Membership Interest to the Company prior to transferring his Membership Interest to his spouse or any of his descendants, or to a trust the sole beneficiaries of which are one or more of his spouse and his descendants, provided that such transfer is by way of inter vivos gift or testamentary or intestate succession. Notwithstanding the preceding sentence, no assignee of a Membership Interest by way of inter vivos gift or testamentary or intestate succession shall become a Member of the Company except upon the unanimous consent of the non-assigning Members.

8.09 Transfers from Custodianships. Notwithstanding Section 8.01 but subject to the limitations set forth in Section 8.08, any Membership Interest that is held by a custodian for a minor under the laws of the Commonwealth of Virginia or any other state shall be fully transferable and assignable to the minor, without an offer being made to the Company, when the minor reaches the age of termination of such custodianship under the applicable statute.

8.10 All Members Subject to Operating Agreement. Notwithstanding any other provision of this Operating Agreement, any Person who becomes a Member of the Company shall be subject to all provisions of this Operating Agreement as if such Person were an original signatory to this Operating Agreement.

ARTICLE IX

DISSOLUTION

9.01 Events of Dissolution. The Company shall be dissolved upon the first to occur of the following:

(a) Any event which under the Articles requires dissolution of the Company.

(b) The unanimous written consent of the Members to the dissolution of the Company.

(c) At any time there are no Members; however, the Company is not dissolved and is not required to be wound up if, within six (6) months after the occurrence of the event that caused the dissociation of the last remaining Member, the personal representative of the last remaining Member agrees in writing to continue the Company until the admission of the personal representative of such Member or its nominee or designee to the Company as a Member, effective as of the occurrence of the event that caused the dissociation of the last remaining Member.

(d) The entry of a decree of judicial dissolution of the Company as provided in the Act.

(e) Any event not set forth above which under the Act requires dissolution of the Company.

9.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

(a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership interests and in satisfaction thereof; and/or

(b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership interest.

9.03 Orderly Liquidation. A reasonable time as determined by the Managers not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

9.04 Distributions. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

(a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then

(b) Second, to the setting up of any reserves which the Manager(s) (or

the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Manager(s) (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed 18 months, the Company shall distribute the balance thereof in the manner provided in the following subsections; then

(c) Third, to the Members to the extent of their respective positive Capital Account balances in the ratio of said Capital Accounts, after first taking into account the allocations prescribed by Section 9.05 below; then

(d) Fourth, to the Members in proportion to their respective Membership Interests.

(e) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested M.A.I. appraiser actively engaged in appraisal work in the Company's business, selected by the Manager(s) (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsections if such property were sold at such fair market value.

9.05 Taxable Gain or Loss. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.

9.08 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the Capital Contribution of each Member, such Member shall have no recourse against any other Member.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.01 Attorneys' Fees. In the event any party brings an action to enforce any provisions of this Operating Agreement, whether such action is at law, in equity or otherwise, and such party prevails in such action, such party shall be entitled, in addition to any other rights or remedies available to it, to collect from the non-prevailing party or parties the reasonable costs and expenses incurred in the investigation preceding such action and the prosecution of such action, including but not limited to reasonable attorneys' fees and court costs.

10.02 Notices. Whenever, under the provisions of the Act or other law, the Articles or this Operating Agreement, notice is required to be given to any Person, it shall not be construed to mean exclusively personal notice unless otherwise specifically provided, but such notice may be given in writing, by mail, addressed to the Company at its principal office from time to time and to any other Person at his address as it appears on the records of the Company from time to time, with postage thereon prepaid. Any such notice shall be deemed to have been given at the time it is deposited in the United States mail. Notice to a Person may also be given personally or by telegram or telecopy sent to his address as it appears on the records of the Company. The addresses of the initial Members as shown on the records of the Company shall originally be those set forth in Article III hereof. Any Person may change his address as shown on the records of the Company by delivering written notice to the Company in accordance with this Section.

10.03 Application of Virginia Law. This Operating Agreement, and the interpretation hereof, shall be governed exclusively by its terms and by the laws of the Commonwealth of Virginia, without reference to its choice of law provisions, and specifically the Act.

10.04 Amendments. No amendment or modification of this Operating Agreement shall be effective except in accordance with the provisions of Section 4.02.

10.05 Construction. Whenever the singular number is used in this Operating Agreement and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.

10.06 Headings. The headings in this Operating Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Operating Agreement or any provision hereof.

10.07 Waivers. The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

10.08 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.09 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent

permitted by law.

10.10 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

10.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

10.12 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

10.13 Entire Agreement. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company as of the date first written above.

MEMBERS:


Kenneth D. Tuck


Scott A. Strelow

EXHIBIT A

MEMBER

PROPERTY

FAIR MARKET VALUE AT
DATE OF CONTRIBUTION
TO THE COMPANY

NARRATIVE

The applicant, Franklin Road Properties, LLC, owns an undeveloped 0.32 acre parcel on Franklin Road (TM#1300121). The parcel is zoned R-12. Neighboring parcels (TM#1300116 and 1300120) on Franklin Road (the "Adjacent Franklin Road Properties") are zoned MX and are used as medical office buildings. The applicant wishes to rezone the 0.32 acre parcel from R-12 to MX (c).

For an extended period of time, parking for customers and employees of the Adjacent Franklin Road Properties has been problematic. A 2002 cross-easement agreement between the parties allowed for joint access to Avenham Road through the Vistar parcel (TM#1300120). Because of a lack of adequate on-site parking, Vistar employees, as well as employees of the dental offices on tax parcel 1300116 have been forced to park on neighboring streets. To lessen that impact on neighboring streets and to provide for safer employee parking, the applicant, comprised of physicians affiliated with Vistar, proposes to develop a parking lot containing eighteen (18) parking spaces on the subject property to serve the Adjacent Franklin Road Properties. That parking lot would be used exclusively by the Adjacent Franklin Road Properties, as more fully set forth in a cross-easement agreement, the current draft of which is enclosed.

Without this additional parking, the functionality of the existing medical office buildings is severely handicapped.

As shown on the proffered Development Plan, a landscape buffer would be installed around the small parking lot. No new access to Franklin Road would be created since the existing access for the Adjacent Franklin Road Properties would serve the parking lot as provided by the new cross-easement agreement. As illustrated on the enclosed Sections, the finished grade of the parking lot will not be significantly different than current grades. Views from the adjoining residential properties are also illustrated on the enclosed Sections.

Consideration: N A
Tax Map Nos.: 1300120
1300116
1300121

Prepared by and Return to:
Maryellen F. Goodlatte, Esq.
VSB #18073
Glenn, Feldmann, Darby & Goodlatte
P. O. Box 2887
Roanoke, Virginia 24001-2887

CROSS-EASEMENT AGREEMENT

THIS CROSS-EASEMENT AGREEMENT (this "Agreement") is executed, delivered and made effective as of this _____ day of _____, 2015 (the "Effective Date"), by and among **VISTAR PROPERTIES, LLC**, a Virginia limited liability company, whose address is 2802 Brandon Avenue, S.W., Roanoke, Virginia 24015 ("Vistar"), **KENNETH D. CUMINS** and **LINDA R. CUMINS, TRUSTEES UNDER THE CUMINS LIVING TRUST DATED JUNE 16, 2004, and any amendments thereto** (collectively, "Cumins"), whose address is 5145 Partridge Circle, S.W., Roanoke, Virginia 24018, and **FRANKLIN ROAD PROPERTIES, LLC**, a Virginia limited liability company, whose address is 3320 Franklin Road, Roanoke, Virginia 24014 ("Franklin Road Properties").

WITNESSETH:

Background Information and Preliminary Statements

The parties recite the following facts:

- A. **The Parties; General Location of the Properties.** Vistar, Cumins, and Franklin Road Properties are each the owner of certain adjoining parcels of real property located in the City of Roanoke, Virginia.
- B. **The Vistar Property.** Vistar owns that certain parcel of real estate located at the corner of Franklin Road, S.W. and Avenham Avenue, S.W. in the City of Roanoke known as 3320 Franklin Road, S.W. (Tax Map No. 1300120) (the "Vistar Property").
- C. **The Cumins Property.** Cumins are the owners of an adjacent parcel fronting on Franklin Road, S.W. to the north of the Vistar Property and known as 3308 & 3310 Franklin Road, S.W. (Tax Map No. 1300116) (the "Cumins Property").
- D. **The Franklin Road Properties Property.** Franklin Road Properties is the owner of an adjacent parcel fronting on Franklin Road, S.W. to the north of the Cumins Property (Tax Map No. 1300121) (the "FRR Property"). The Vistar Property, the Cumins Property and the FRR Property are sometimes hereinafter collectively referred to as the "Properties".
- E. **The Existing Easement.** A Cross Easement Agreement dated June 24, 2002 and recorded in the City of Roanoke Circuit Court Clerk's Office as Instrument Number 020012049 (the

"Existing Easement"), granted cross-easements benefitting the Cumins Property and the Vistar Property by providing access to and from Franklin Road and Avenham Avenue as more particularly described in the Existing Easement. The rights and obligations contained in this Agreement are in addition to, and not in replacement of, the rights and obligations set forth in the Existing Easement.

- F. General Description of the Easements Granted Herein. Franklin Road Properties intends to construct a parking lot containing up to 18 parking spaces on the FRR Property (the "Parking Lot"). The Parking Lot will primarily serve the Vistar Property, but will provide no less than 4 parking spaces for the benefit of the Cumins Property. In order to provide for the development and use of the Parking Lot, to provide for the coordinated ingress, egress and access to, from and between the Properties and Franklin Road, the parties have agreed to grant certain easements over the Properties and to impose certain requirements on the parties hereto and their respective successors and assigns, which easements and obligations are generally described herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, as set forth in the foregoing Background Information and Preliminary Statements, and of the mutual promises herein set forth, and for \$10.00 and other good and valuable consideration paid, the parties do hereby grant and convey to each other with general warranty the following easements and do hereby make the following related agreements on and subject to the following terms, conditions, covenants, restrictions and provisions, intending to be legally bound hereby:

ARTICLE I

Franklin Road Properties Easement to Vistar

Section 1.01. Parking Easement. Subject to the terms and conditions set forth in this Agreement, Franklin Road Properties hereby grants and conveys to Vistar for the benefit of the Vistar Property a non-exclusive easement for the purpose of vehicular parking on the areas designated by Franklin Road Properties for vehicular parking on the Parking Lot. Franklin Road Properties intends to develop eighteen (18) spaces on the Parking Lot, fourteen (14) of which shall be for the use of employees in and visitors to the Vistar Property. Nothing in this agreement shall prohibit Franklin Road Properties from modifying the layout of the Parking Lot. Franklin Roanoke Properties hereby reserves the right to use such areas of the FRR Property and the Parking Lot for all purposes which will not interfere with the Vistar Property's enjoyment of the rights granted hereby. Franklin Road Properties shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the Vistar Property's use of the designated parking areas on the Parking Lot.

Section 1.02. Non-Obstruction Agreement. Franklin Road Properties shall not cause any improvements to be made on the FRR Property which unreasonably interfere with the use of the Parking Lot by Vistar.

ARTICLE II

Franklin Road Properties Easement to Cumins

Section 2.01. Parking Easement. Subject to the terms and conditions set forth in this Agreement, Franklin Road Properties hereby grants and conveys to Cumins for the benefit of the Cumins Property a non-exclusive easement for the purpose of vehicular parking on the areas designated by Franklin Road Properties for vehicular parking on the Parking Lot. Franklin Road Properties intends to develop eighteen (18) spaces on the Parking Lot, four (4) of which shall be for the use of the Cumins Property, including its owners, tenants, and their employees, agents, and visitors. Nothing in this agreement shall prohibit Franklin Road Properties from modifying the layout of the Parking Lot. Franklin Road Properties hereby reserves the right to use such areas of the FRR Property and the Parking Lot for all purposes which will not interfere with the Cumins Property's enjoyment of the rights granted hereby. Franklin Road Properties shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to the Cumins Property's use of the designated parking areas on the Parking Lot.

Section 2.02. Non-Obstruction Agreement. Franklin Road Properties shall not cause any improvements to be made on the FRR Property or take any actions which interfere with the use of the FRR Property by Cumins.

ARTICLE III

Reciprocal Easements; Cumins to Vistar and Vistar to Cumins

Section 3.01. Ingress/Egress Easement. Subject to the terms and conditions set forth in this Agreement, Cumins hereby grants and conveys to Vistar and its successors and assigns, as an easement appurtenant to the Vistar Property, a non-exclusive easement for the purpose of pedestrian and vehicular ingress, egress, passage and traffic, but not for parking, upon, over, across and through the paved travel areas not designated for parking of the Cumins Property in order to access the Parking Lot, Franklin Road, and the Vistar Property. Cumins hereby reserves the right to modify the designated parking and travel areas in a manner, and to use the Cumins Property for all purposes, which will not interfere with Vistar's enjoyment of the rights granted hereby. Except as expressly set forth in this Agreement, free vehicular and pedestrian access between the Vistar Property and the Parking Lot and Franklin Road shall not be impeded by Cumins and shall at all times be maintained.

Section 3.02. Non-Obstruction Agreement. Cumins shall not cause any improvements to be made on the Cumins Property which interfere with the use of this ingress/egress easement by Vistar.

Section 3.03. Ingress/Egress Easement. Subject to the terms and conditions set forth in this Agreement, Vistar hereby grants and conveys to Cumins and its successors and assigns, as an easement appurtenant to the Cumins Property, a non-exclusive easement for the purpose of pedestrian and vehicular ingress, egress, passage and traffic, but not for parking, upon, over, across and through the paved travel areas not designated for parking of the Vistar Property in order to access the Parking Lot, Avenham Avenue, and Franklin Road. Vistar hereby reserves the right to modify the designated parking and travel areas in a manner, and to use the Vistar Property for all purposes, which will not interfere with Cumins' enjoyment of the rights granted hereby. Except as expressly set forth in this Agreement, free vehicular and pedestrian access between the Cumins Property and the Parking Lot, Avenham Avenue, and Franklin Road shall not be impeded by Vistar and shall at all times be maintained.

Section 3.04. Non-Obstruction Agreement. Vistar shall not cause any improvements to be made on the Vistar Property which interfere with the use of this ingress/egress easement by Cumins.

ARTICLE IV

Cumins and Vistar Easements to Franklin Road Properties

Section 4.01. Ingress/Egress Easement. Subject to the terms and conditions set forth in this Agreement, Cumins hereby grants and conveys to Franklin Road Properties and its successors and assigns, as an easement appurtenant to the FRR Property, a non-exclusive easement for the purpose of pedestrian and vehicular ingress, egress, passage and traffic upon, over, across and through the Cumins Property in order to provide access for the Parking Lot to and from Franklin Road and the Vistar Property. Cumins hereby reserves the right to use the Cumins Property for all purposes which will not interfere with Franklin Road Properties' enjoyment of the rights granted hereby. Except as expressly set forth in this Agreement, free vehicular and pedestrian access between the Parking Lot, Franklin Road and the Vistar Property shall not be impeded by Cumins and shall at all times be maintained.

Section 4.02. Temporary Easements. Cumins hereby grants and conveys to Franklin Road Properties a non-exclusive temporary access easement over the existing paved travel areas not designated for parking on the Cumins Property for the purposes of providing contractor access to the FRR Property in order to develop and construct the Parking Lot, and to provide periodic access to the Parking Lot for the purpose of maintaining the same. Franklin Road agrees to promptly repair all damage to the Cumins Property and the paved areas thereon caused as a result of use of this temporary construction easement.

Section 4.03. Non-Obstruction Agreement. Cumins shall not cause any improvements to be made on the Cumins Property which interfere with the use of this ingress/egress easement by Franklin Road Properties.

Section 4.04. Ingress/Egress Easement. Subject to the terms and conditions set forth in this Agreement, Vistar hereby grants and conveys to Franklin Road Properties and its successors and assigns, as an easement appurtenant to the FRR Property, a non-exclusive easement for the purpose of pedestrian and vehicular ingress, egress, passage and traffic upon, over, across and through the Vistar Property in order to provide access for the Parking Lot to and from Avenham Avenue and the Cumins Property. Vistar hereby reserves the right to use the Vistar Property for all purposes which will not interfere with Franklin Road Properties' enjoyment of the rights granted hereby. Except as expressly set forth in this Agreement, free vehicular and pedestrian access between the Parking Lot, Avenham Avenue, and the Cumins Property shall not be impeded by Vistar and shall at all times be maintained.

Section 4.05. Non-Obstruction Agreement. Vistar shall not cause any improvements to be made on the Vistar Property which interfere with the use of this ingress/egress easement by Franklin Road Properties.

ARTICLE V

Parking Requirements Related to the Properties

Section 5.01. Minimum and Maximum Parking. As a result of the square footage of the existing improvements on the Cumins Property and the Vistar Property, and their current classification as medical clinics under the City of Roanoke Zoning Ordinance, there are minimum and maximum parking requirements attached to each. The parties agree that for the purpose of meeting the City of Roanoke minimum and maximum parking requirements, parking requirements applicable to the Properties shall be combined and shall be deemed to be shared. The parties agree to execute such documents as may be required by the City of Roanoke to confirm such sharing for the purpose of complying with City of Roanoke development and zoning requirements. The parties also recognize that a portion of the parking spaces in the Parking Lot may need to be pervious in order to meet City of Roanoke development requirements.

ARTICLE VI

Contingencies

Section 6.01. Zoning. The parties recognize and agree that the Parking Lot cannot be constructed until the zoning classification of the FRR Property is changed to a zoning district which allows off-site parking. Franklin Road Properties is in the process of seeking that zoning amendment. Accordingly, the parties recognize and agree that the easements granted herein are subject to Franklin Road Properties' ability to rezone the Parking Lot and to develop the Parking Lot so as to meet all City of Roanoke development requirements.

Section 6.02. Agreement with Vistar. The parties further understand, recognize, and agree that the obligations set out herein are subject to Vistar and Franklin Road Properties entering into a mutually acceptable agreement which addresses the development of, ownership of, and maintenance of the Parking Lot.

Section 6.03. Recordation. Once the agreement described in Section 6.02 above has been executed by Vistar and Franklin Road Properties, and once the Parking Lot has been rezoned to permit its development, the parties agree that this Agreement may be recorded by Franklin Road Properties or Vistar. Until such time, the parties agree that this Agreement shall not be put to record.

Section 6.04. Termination of Easement. The parties agree that if the Parking Lot has not been developed, or the contingencies set forth in Sections 6.01 and 6.02 are not satisfied, by _____, this Agreement and the rights and obligations provided herein shall terminate.

ARTICLE VII

Maintenance Obligations

Section 7.01. Maintenance of the Access and Parking Easement Areas. Except for maintenance or repairs the need for which arises from the acts or omissions of the other party, its agents, employees, tenants, licensees or invitees, each party shall be solely responsible for the maintenance, including snow removal, and repair of the parking and easement areas located on their respective Properties. The costs of any and all repairs or maintenance which a party, in its reasonable discretion, determines arise from the acts or omissions of the other party, its agents, employees, tenants, licensees or invitees, shall be borne solely by the other party. Such party agrees to carry out any maintenance or repair activity required under this section with diligence and dispatch and shall use its best efforts to complete the same in the shortest commercially reasonable time under the circumstances, but in no event shall such maintenance or repair activity continue without completion for more than sixty (60) days. Such party shall not carry out any such maintenance or repair activity in such a manner as to interfere unreasonably with the other party's use and enjoyment of its Property. If a party fails to comply with the requirements of this Section, or unreasonably interferes with the rights granted or reserved to the other party hereunder, then, after having complied with the procedures set forth in Section 9.01 hereof, the other party may pursue any of the remedies afforded to it under Section 9.02 hereof.

ARTICLE VIII

Indemnification

Section 8.01. Indemnification.

(a) By Vistar. Except for injuries, deaths, losses, damages, or other matters resulting from the acts or omissions of Cumins or Franklin Road Properties or of the agents, employees, licensees and invitees (excluding Vistar) thereof, Vistar shall indemnify Cumins and Franklin Road Properties and save them harmless from and against all loss, liability, damage, actions, causes of action, or claims for injury, death, loss or damage of whatever nature to any person, property or business interest caused by or resulting from an act or omission of Vistar or agents, employees, servants, licensees (excluding Cumins and Franklin Road Properties), invitees, tenants or subtenants of Vistar in respect of the matters set forth in this Agreement, and from and against any and all costs, expenses or liabilities (including reasonable fees of attorneys, paralegals, experts, court reporters and others) incurred by Cumins or Franklin Road Properties in connection with any claim, action or proceeding in respect of any such loss, liability, damage or claim.

(b) By Cumins. To the extent allowable by law, except for injuries, deaths, losses, damages, or other matters resulting from the acts or omissions of Vistar or Franklin Road Properties or of the agents, employees, licensees and invitees (excluding Cumins) thereof, Cumins shall indemnify Vistar and Franklin Road Properties and save them harmless from and against all loss, liability, damage, actions, causes of action, or claims for injury, death, loss or damage of whatever nature to any person, property or business interest caused by or resulting from an act or omission of Cumins or agents, employees, servants, licensees (excluding Vistar and Franklin Road Properties), invitees, tenants or subtenants of Cumins in respect of the matters set forth in this Agreement, and from and against any and all costs, expenses or liabilities (including reasonable fees of attorneys, paralegals, experts, court reporters and others) incurred by Vistar or Franklin Road Properties in connection with any claim, action or proceeding in respect of any such loss, liability, damage or claim.

(c) By Franklin Road Properties. Except for injuries, deaths, losses, damages, or other matters resulting from the acts or omissions of Cumins or Vistar or of the agents, employees, licensees and invitees (excluding Franklin Road Properties) thereof, Franklin Road Properties shall indemnify Cumins and Vistar and save them harmless from and against all loss, liability, damage, actions, causes of action, or claims for injury, death, loss or damage of whatever nature to any person, property or business interest caused by or resulting from an act or omission of Franklin Road Properties or agents, employees, servants, licensees (excluding Cumins and Vistar), invitees, tenants or subtenants of Franklin Road Properties in respect of the matters set forth in this Agreement, and from and against any and all costs, expenses or liabilities (including reasonable fees of attorneys, paralegals, experts, court reporters and others) incurred by Cumins or Vistar in connection with any claim, action or proceeding in respect of any such loss, liability, damage or claim.

ARTICLE IX

Defaults and Remedies

Section 9.01. Defaults. If any party (the “defaulting party”) should fail to observe any of the terms, conditions, restrictions or provisions of, or should fail to perform any of its covenants or obligations under this Agreement within a period of thirty (30) days after either of the other party (the “non-defaulting party”) has given to the defaulting party written notice thereof, then the defaulting party shall be in default under this Agreement; provided that if the obligation is of such a nature that the same cannot, with due diligence, be reasonably performed within such 30-day period, then such default shall be deemed to have been cured if the defaulting party commences such performance within such 30-day period and thereafter undertakes and proceeds with due diligence to complete the same and does complete the same within a reasonable time. If a default has occurred and is not cured within the time period specified in this section, then the non-defaulting party shall have all of the rights and remedies afforded to it by law and also all of the rights and remedies set forth in Section 9.02 hereof (whether or not they are expressly provided by statute or recognized by judicial precedent), any one or more of which may be exercised and enforced independently or concurrently at any time after such default, without further notice to the defaulting party and without waiving any of the non-defaulting parties’ other rights and remedies, and all of which shall, to the extent applicable, survive the termination of any right granted in this Agreement.

Section 9.02. Remedies.

(a) Cure. If cure is not effectuated within the time periods as provided in Section 9.01 above, the non-defaulting party may cure, but is not required to cure, any default of the defaulting party under this Agreement; and if the non-defaulting party should do so, then it shall be entitled to be reimbursed for all reasonable costs and expenses incurred by it in connection therewith, from either the defaulting party, its contractors, or its insurance carriers.

(b) Civil Actions. The non-defaulting party may sue the defaulting party for the specific performance of any obligation undertaken by the defaulting party in this Agreement, for injunctive or other equitable relief, or for damages in any court of competent jurisdiction in order to recover any such amount as may be due and payable to the non-defaulting party.

Section 9.03. Obstruction Defaults. Notwithstanding anything to the contrary contained in this Agreement, and except where obstruction is reasonably necessitated in order to perform any maintenance or repair obligation for an easement in accordance with this Agreement, in the event vehicular access through an easement area is completely obstructed (each such event, an “Obstruction Default”), the owner of the benefited parcel may notify the owner of such easement area by any means reasonable under the circumstances, including via facsimile or telephone, of the Obstruction Default and demand that the Obstruction Default be remedied. If, after twenty-four (24) hours after such notice has been provided, the owner of the easement area has not remedied the Obstruction Default or commenced to remedy the Obstruction Default and thereafter

remedies such Obstruction Default within forty-eight (48) hours, the owner of the benefited parcel shall have the right (but not the obligation) to enter upon such easement area and remedy the Obstruction Default and shall be reimbursed by the owner of the easement area for the reasonable costs for such remedy upon demand.

ARTICLE X

Force Majeure

Section 10.01. Delays. The time periods by which a party is required to perform its obligations under this Agreement shall be extended by the period of any delays arising by reason of excused causes which render performance impracticable. Excused causes include, without limiting the generality of the foregoing, war, nuclear disaster, insurrection, strikes or other labor disputes, unavailability of materials, riot, rationing, civil disobedience, fire, flood, hurricane, earthquake, any act of God and acts, failures to act, actions and proceedings or regulations of any governmental authority (whether legislative, executive, administrative or judicial). Notwithstanding the foregoing, excused causes shall not include (i) causes which result from the gross negligence or willful misconduct of the party seeking an extension of time pursuant to this Section 10.01 or (ii) a lack of funds.

ARTICLE XI

Notices; Notice of Transfer

Section 11.01. Notices. Except as set forth in Section 9.03, any notice or other communication required or permitted to be given to a party under this Agreement shall be in writing and shall be given by one of the following methods to such party at the address set forth at the end of this Section 11.01: (i) It may be sent by ordinary U.S. mail or by registered or certified U.S. mail, return receipt and postage prepaid, or (ii) it may be delivered in person or by over-night courier, facsimile, or any other means for transmitting a written communication provided that such means allows for confirmation of receipt which confirmation shall be required to effectuate notice under this Section 11.01. Any such notice shall be deemed to have been given upon receipt or refusal of receipt. Either party may change its address for notice by giving written notice thereof to the other party. The address of each party for notice initially is as follows:

If to Vistar:

Vistar Properties, LLC
3320 Franklin Road
Roanoke, Virginia 24014
Facsimile: _____

If to Cumins:

Kenneth D. Cumins and Linda R. Cumins, Trustees
5145 Partridge Circle, S.W.
Roanoke, Virginia 24018
Facsimile: _____

If to Franklin Road Properties:

Franklin Road Properties, LLC
3320 Franklin Road
Roanoke, Virginia 24014
Facsimile: _____

Section 11.02. Notice of Transfer. If a party should transfer its interest in its Property, it shall immediately notify the other party of such transfer in the manner provided in Section 11.01 hereof. Such notice shall contain the name of the transferee and the address of such transferee for purposes of receiving notices hereunder. If a party fails to notify the other of a transfer of its interest in its Property, or fails to include the address of the transferee in a transfer notice, the other party may, but shall not be obligated to, send notices hereunder to such transferee at the tax mailing address listed for such transferee on the books of the City of Roanoke tax collector's office until such time as the transferee has notified the other party of a different notice address in the manner provided in Section 11.01 hereof.

ARTICLE XII

Miscellaneous Provisions

Section 12.01. Successors and Assigns. Except as otherwise provided herein, this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assigns) of the parties hereto.

Section 12.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia. The parties hereby submit to the exclusive jurisdiction of the state courts located in the City of Roanoke, Virginia, in any action or proceeding arising out of, or related to this Agreement, and the parties hereby agree that all claims in respect to any action or proceeding shall be heard or determined only in these courts.

Section 12.03. Remedies Cumulative. All rights and remedies of the parties hereto enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised and enforced concurrently. No waiver by any party of any covenant or condition of this Agreement, to be kept or performed by any other

party to this Agreement, shall constitute a waiver by the waiving party of any subsequent breach of such covenant or conditions, or authorize the breach or non-observance on any other occasion of the same or any other covenant or condition of this Agreement.

Section 12.04. Duplicate Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

Section 12.05. Article and Section Captions. The Article and Section captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.

Section 12.06. Severability. If any provision of this Agreement or the application of any provision to any person or entity or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of said provision to any other person or entity or circumstance, all of which other provisions shall remain in full force and effect.

Section 12.07. Amendments in Writing. No change, amendment, termination or attempted waiver of any of the provisions of this Agreement shall be binding upon any party unless in writing and signed by all of the parties hereto.

Section 12.08. Agreement for Exclusive Benefit of Parties; Further Assurances. The provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person or entity. The parties agree that each will execute such additional documents as may be reasonably required to effectuate the terms of this Agreement.

Section 12.09. No Partnership, Joint Venture or Principal-Agency Relationship. Neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person or entity, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any such association between the parties to this Agreement.

Section 12.10. Written Consent Required. Whenever a party is requested to consent to or approve of any matter with respect to which its consent or approval is required by this Agreement, such consent or approval, if given, and unless a shorter time period is specified herein, shall be given in writing and shall be given within thirty (30) days of request therefor. Failure to consent, reject, approve or disapprove in writing within such thirty (30) day period (or such shorter time period as may be specified herein) shall constitute consent and approval.

Section 12.11. Reasonableness of Consent or Approval. Whenever a party is entitled to exercise some right under this Agreement, only with the prior consent or approval of another party, such consent or approval shall not be unreasonably withheld, delayed or conditioned, unless otherwise stated herein.

Section 12.12. Covenants Run With the Land. It is intended that the covenants, easements, agreements, promises and duties of each party, as set forth in this Agreement, shall be construed as covenants and not as conditions and that, to the fullest extent legally possible, all such covenants shall run with and be enforceable against both the covenantor and the land or constitute equitable servitudes as between the parcel of the respective covenantor, as the servient tenement, and the parcel of the respective covenantee, as the dominant tenement.

Section 12.13. No Merger. All of the provisions of this Agreement are for the mutual benefit and protection of the present and all future owners of the Properties; and if there should at any time be common ownership of any of the Properties, or any estate therein, then it is the intention of the parties hereto that there be no merger into the respective fee simple estates of the rights and benefits and the obligations and burdens of this Agreement, but rather that such rights and benefits and such obligations and burdens shall be separately preserved for the benefit of all future owners of the fee simple estates in said Properties.

Section 12.14. No Dedication. Nothing in this Agreement shall be deemed to constitute a gift, grant or dedication of any portion of the Properties to the general public or for any public purpose, provided that the parties shall have the right to extend the benefit of any of the easements granted herein to any governmental unit, public body and/or utility company for the purpose of the construction, installation, operation, maintenance, repair, relocation, modification, extension or alteration of utility lines and related facilities, but such grant shall be subject to the terms and conditions hereof.

Section 12.15. Termination of Liability Upon Transfer. If the owner of a Property should transfer its fee simple interest in and ownership of such Property, then the liability of the transferor for the breach of any covenant or provision contained in this Agreement and the liability of the transferor for any obligation arising under this Agreement occurring after the date of such transfer, shall automatically be terminated; and the transferee, by the acceptance of the conveyance of such fee simple interest, shall automatically be deemed to have accepted, assumed and agreed to observe or perform such covenant or provision after the date of such transfer.

Section 12.16. Compliance With Laws. The parties, at their sole cost and expense, shall obtain any necessary licenses and permits and otherwise shall comply with any and all federal, state, local and other governmental statutes, laws, rules, orders, regulations and ordinances affecting or relating to their respective Properties, including, without limitation, any requirements or obligations set forth in any applicable zoning ordinance or limitation text.

Section 12.17. Restoration. If, as a result of the exercise of any easement rights created under this Agreement, a party shall damage or disturb the improvements of the other party

(ordinary wear and tear excepted) that are part of or are permanently located in the easement area, the party causing such damage or disturbance shall promptly repair or restore the Property of such other party to, as near as possible, the condition existing prior to such damage or disturbance.

IN WITNESS WHEREOF, the parties have caused the Cross-Easement Agreement to be executed under seal by their duly authorized representatives, to be effective as of the date first above written.

VISTAR PROPERTIES, LLC,
a Virginia limited liability company

By: _____

Its: _____

Kenneth D. Cumins, Trustee under the
Cumins Living Trust dated June 16, 2004,
and any amendments thereto

Linda R. Cumins, Trustee under the
Cumins Living Trust dated June 16, 2004,
and any amendments thereto

FRANKLIN ROAD PROPERTIES, LLC,
a Virginia limited liability company

By: _____

Its: _____

[NOTARY ACKNOWLEDGMENTS ON FOLLOWING PAGES]

STATE OF _____)
) to-wit:
CITY / COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of **Vistar Properties, LLC**, a Virginia limited liability company, on behalf of said company.

Notary Public

Commission Expires: _____
Registration Number: _____

STATE OF _____)
) to-wit:
CITY / COUNTY OF _____)

The foregoing instrument was acknowledged before me by **Kenneth D. Cumins, Trustee under the Cumins Living Trust dated June 16, 2004**, this _____ day of _____, 2015.

Notary Public

Commission Expires: _____
Registration Number: _____

STATE OF _____)
) to-wit:
CITY / COUNTY OF _____)

The foregoing instrument was acknowledged before me by **Linda R. Cumins, Trustee**
under the Cumins Living Trust dated June 16, 2004, this _____ day of _____, 2015.

Notary Public

Commission Expires: _____
Registration Number: _____

STATE OF _____)
) to-wit:
CITY / COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by _____ of **Franklin Road**
Properties, LLC, a Virginia limited liability company, on behalf of said company.

Notary Public

Commission Expires: _____
Registration Number: _____

**PROFFER TO BE ADOPTED
ON
ROANOKE CITY TAX PARCEL NO. 1300121**

1. The property shall be developed in substantial conformity with the Development Plan prepared by Lumsden Associates, P.C. dated July 8, 2015 and revised September 17, 2015 and attached hereto as Exhibit A ("Development Plan") subject to those changes which may be required by the City of Roanoke during development plan review.

PROPOSED DEVELOPMENT SUMMARY

PROPOSED ZONING: MIX DISTRICT
 LOT AREA: 0.32 AC (14,130 SF)
 LOT FRONTAGE: 135'
 MAX IMPERVIOUS SURFACE AREA: 70%
 PROPOSED IMPERVIOUS SURFACE AREA: 37%

LANDSCAPE BUFFER PLANTINGS

LANDSCAPING SHALL CONFORM TO THE REQUIREMENTS OF SECTION 36.2-648 AND TABLE 648-1 OF THE CODE OF THE CITY OF ROANOKE. SPECIFICALLY, THERE SHALL BE AN 8-FOOT DEEP YARD WITH DECIDUOUS TREES AND EVERGREEN SHRUBS ALONG STREET FRONTAGE, AND DECIDUOUS TREES AND SHRUBS BETWEEN THE PARKING AREA AND ADJUTING RESIDENTIAL DISTRICTS.

LOT 4-3
 LECTRA E. & STANLEY HARRIS PLAT
 D.B. 891, PG. 112
 TAX # 1300115
 ZONED R-12

TAX # 1300116
 PROPERTY OF
 KENNETH D. CLARK
 & LINDA R. CLARK
 INSTR. # 00018874
 ZONED MIX

TAX # 1300720
 VESTAR PROPERTIES, LLC
 INSTR. # 00018874
 ZONED MIX

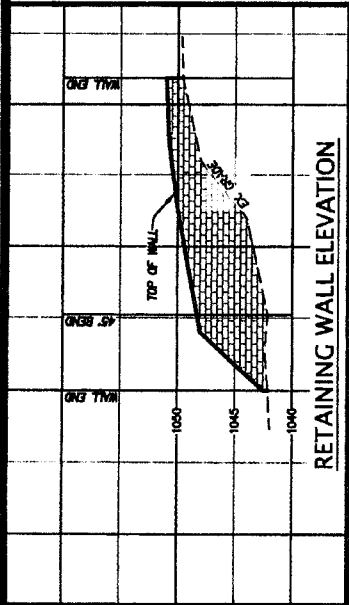
PLAT SHOWING THE DIVISION OF
 LOTS 3, 4 & 5, BLOCK "D"
 D.B. 891, PG. 384
 ZONED R-12

Lot 3A
 TAX # 1300713

Lot 4A
 TAX # 1300711

INSET SCALE: 1" = 40' (HOR)
 1" = 10' (VER)

RETAINING WALL ELEVATION



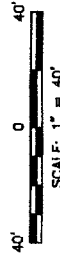
ENHANCED BUFFER PLANTINGS

ENHANCED BUFFER LANDSCAPING SHALL INCLUDE A ROW OF EVERGREEN TREES PLANTED ON 8' CENTERS ALONG THE PROPERTY LINE, AND A ROW OF EVERGREEN SHRUBS BETWEEN THE PARKING AREA AND ADJUTING RESIDENTIAL DISTRICTS, AND DECIDUOUS TREES PLANTED THROUGHOUT THE REMAINDER OF THE AREA AT A DENSITY OF 1 (ONE) PER 150 SF.

EXHIBIT "A" DEVELOPMENT PLAN

PROPERTY OF
 FRANKLIN ROAD PROPERTIES, LLC
 SITUATED ALONG FRANKLIN ROAD
 CITY OF ROANOKE, VIRGINIA

GRAPHIC SCALE



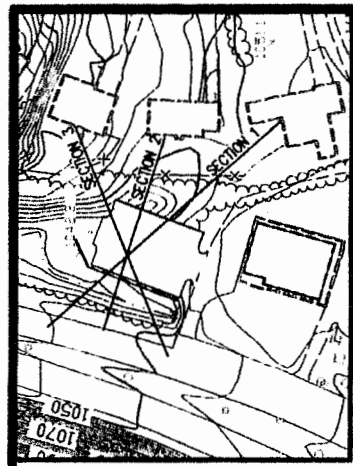
LUMSDEN ASSOCIATES, P.C.
 ENGINEERS-SURVEYORS-PLANNERS
 ROANOKE, VIRGINIA

4664 BRAMBLETON AVENUE
 P.O. BOX 20669
 ROANOKE, VIRGINIA 24018

PHONE: (540) 774-4411
 FAX: (540) 772-9445
 E-MAIL: MAIL@LUMSDENPC.COM

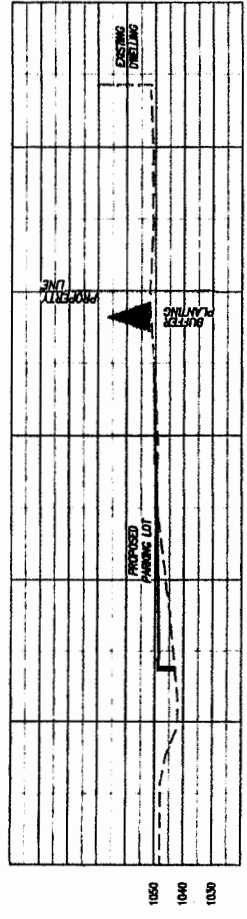
DATE: REVISED: September 17, 2015 July 8, 2015
 COMM. NO.: 11-242
 SCALE: 1" = 40'

SHEET 1 OF 1

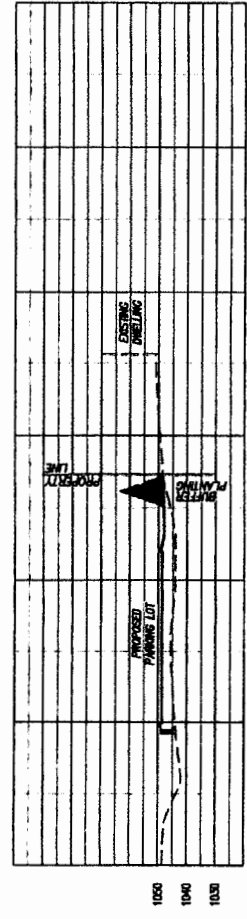


SECTION LOCATION MAP

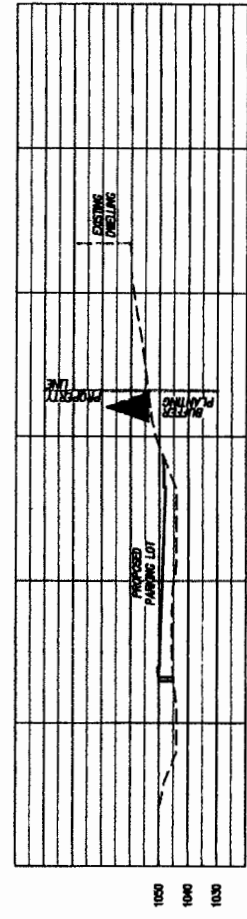
NOTE:
THE SECTIONS SHOWN ARE DERIVED USING CITY OF ROANOKE BASE
MAPPING.



SECTION 1



SECTION 2



SECTION 3

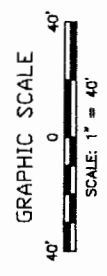


EXHIBIT "B"
PROPOSED SECTIONS
PROPERTY OF
FRANKLIN ROAD PROPERTIES, LLC
SITUATED ALONG FRANKLIN ROAD
CITY OF ROANOKE, VIRGINIA

DATE:	July 8, 2015
COMM. NO.:	11-242
SCALE:	1" = 40'

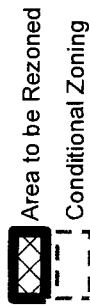
PHONE: (540) 774-4411
FAX: (540) 772-9445
E-MAIL: MAIL@LUMSDENPC.COM

4664 BRAMBLETON AVENUE
P.O. BOX 20669
ROANOKE, VIRGINIA 24018

LUMSDEN ASSOCIATES, P.C.
ENGINEERS-SURVEYORS-PLANNERS
ROANOKE, VIRGINIA

ZONING DISTRICT MAP

0 Franklin Road SW
Official Tax Parcel: 1300121

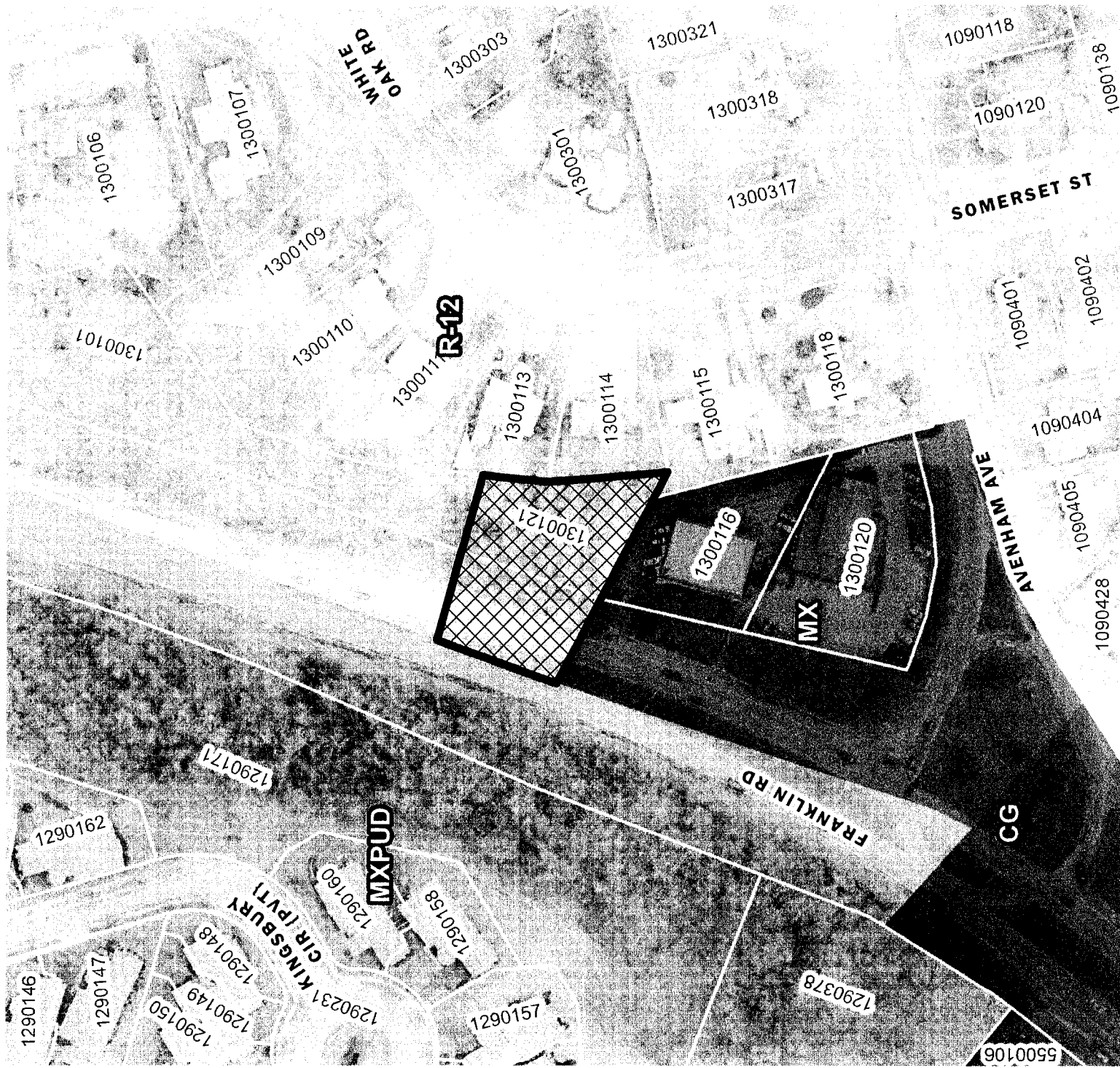


Zoning

- RA (Residential-Agriculture)
- R-12 (Res. Single-Family)
- R-7 (Res. Single-Family)
- R-5 (Res. Single-Family)
- R-3 (Res. Single-Family)
- RM-1 (Res. Mixed Density)
- RM-2 (Res. Mixed Density)
- RMF (Res. Multi-Family)
- CN (Commercial-Neigh)
- CG (Commercial-General)
- CLS (Commercial-Large Site)
- I-1 (Light Industrial)
- I-2 (Heavy Industrial)
- D (Downtown)
- MX (Mixed Use)
- IN (Institutional)
- ROS (Rec & Open Space)
- AD (Airport Dev)
- MXPUD (Mixed Use Planned Unit Dev)
- INPUD (Institutional Planned Unit Dev)
- IPUD (Industrial Planned Unit Dev)
- UF (Urban Flex)



0 50 100 Feet



556
10/12/15

C.1.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to rezone certain property located at 3302 Franklin Road, S.W., from R-12, Residential Single-Family District, to MX, Mixed Use District, subject to a certain condition proffered by the applicant; and dispensing with the second reading of this ordinance by title.

WHEREAS, Franklin Road Properties, LLC, has made application to the Council of the City of Roanoke, Virginia ("City Council"), to have the property located at 3302 Franklin Road, S.W., bearing Official Tax Map No. 1300121, rezoned from R-12, Residential Single-Family District, to MX, Mixed Use District, subject to a certain condition;

WHEREAS, the City Planning Commission, after giving proper notice to all concerned as required by §36.2-540, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to City Council;

WHEREAS, a public hearing was held by City Council on such application at its meeting on October 19, 2015, after due and timely notice thereof as required by §36.2-540, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the proposed rezoning; and

WHEREAS, this Council, after considering the aforesaid application, the recommendation made to City Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, finds that the public

necessity, convenience, general welfare and good zoning practice, require the rezoning of the subject property, and for those reasons, is of the opinion that the hereinafter described property should be rezoned as herein provided.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. Section 36.2-100, Code of the City of Roanoke (1979), as amended, and the Official Zoning Map, City of Roanoke, Virginia, dated December 5, 2005, as amended, be amended to reflect that Official Tax Map No. 1300121 located at 3302 Franklin Road, S.W., be, and is hereby, rezoned from R-12, Residential Single-Family District, to MX, Mixed Use District, subject to a certain condition proffered by the applicant, as set forth in the Zoning Amendment Amended Application No. 1 dated September 18, 2015.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: Application by Hunter Real Estate Group, LLC, to rezone property located at 2514 and 2518 Williamson Road, N.E., bearing Official Tax Nos. 3090227 and 3090225, from Commercial-Neighborhood District (CN) to Commercial-General District (CG) with conditions.

Recommendation

The Planning Commission held a public hearing on Monday, October 12, 2015. By a vote of 4 – 0 the Commission recommended approval of the rezoning request, finding that the Original Application is consistent with the overall goals of the City's Comprehensive Plan, *Williamson Road Area Plan*, and Zoning Ordinance as the subject property will be redeveloped for an active use in a manner compatible with the surrounding area.

Application Information

Request:	Rezoning
Owner:	David L. Hunter, Hunter Real Estate Group, LLC
Applicant:	N/A
Authorized Agent:	Maryellen Goodlatte, Glenn Feldmann Darby & Goodlatte
City Staff Person:	Katharine Gray, Land Use and Urban Design Planner
Site Address/Location:	2514 and 2518 Williamson Road N.E.
Official Tax Nos.:	3090227 and 3090225, respectively
Site Area:	Approximately .8116 acres
Existing Zoning:	CN, Commercial-Neighborhood District
Proposed Zoning:	CG, Commercial-General District with conditions
Existing Land Use:	Motor Vehicle Sales and Service Establishment, Used and Vacant
Proposed Land Use:	Motor Vehicle Sales and Service Establishment, Used
Neighborhood Plan:	Williamson Road Area Plan
Specified Future Land Use:	small & medium scale commercial
Filing Date:	Original Application: August 31, 2015

Background

Hunter Real Estate Group, LLC owns the property located at 2514 and 2518 Williamson Road, N.E., bearing Official Tax nos. 3090227 and 3090225, respectively. The property at 2514 Williamson Road, N.E., has operated as a non-conforming use, and the property owner now desires to expand that use onto its adjacent property. Non-conforming uses may not be expanded except by special exception on the same lot and is limited to a 25% increase. The adjacent property would be greater than the increase allowed and would not be permitted. Therefore, the owner seeks to rezone the two parcels to CG with conditions to allow the use as proposed.

In August 2015, the owner filed a petition to rezone the parcel from CN to CG, with conditions. The proffered conditions restrict land uses permitted on the properties, state that the properties will be developed in substantial conformity with a development plan, and restrict new freestanding signage to conformity with certain sign regulations pertaining to a CN district.

Conditions Proffered by the Applicant

1. The properties shall be used only for the following uses:

A. The following uses which are permitted of right in both the CN and CG zoning districts:

1. Business service establishment, not otherwise listed
2. Financial institution
3. Laboratory, dental, medical, or optical
4. Medical clinic
5. Office, general or professional
6. Office, general or professional, large scale
7. Animal hospital or veterinary clinic, no outdoor pens or runs
8. Community market
9. Live-work unit
10. Mixed-use building
11. Studio/multimedia production facility
12. Bakery, confectionary, or similar food production, retail
13. Body piercing establishment
14. Dry cleaning and laundry pick-up station
15. General service establishment, not otherwise listed
16. Internet sales establishment
17. Laundromat
18. Motor vehicle rental establishment, without inventory on-site
19. Personal service establishment, not otherwise listed
20. Pet grooming
21. Retail sales establishment, not otherwise listed
22. Tattoo parlor
23. Club, lodge, civic, or social organization

- 24. Community center
- 25. Eating establishment
- 26. Health and fitness center
- 27. Meeting hall
- 28. Park or playground
- 29. Place of worship
- 30. Theater, movie or performing arts
- 31. Artist studio
- 32. Community garden
- 33. Day care center, adult
- 34. Day care center, child
- 35. Educational facilities, business school or nonindustrial trade school
- 36. Educational facilities, elementary/middle/secondary
- 37. Educational facilities, school for the arts
- 38. Fire, police, or emergency services
- 39. Government offices or other government facility, not otherwise listed
- 40. Library
- 41. Museum
- 42. Post office
- 43. Broadcasting studio or station
- 44. Utility distribution or collection, basic
- 45. Wireless telecommunications facility, stealth
- 46. Accessory uses, not otherwise listed
- 47. Outdoor display area

and

B. The following additional uses:

- 48. Motor vehicle rental establishment, with inventory on site
 - 49. Motor vehicle (motorcycle) sales and service establishment, new
 - 50. Motor vehicle sales and service establishment, used
2. The property shall be developed in substantial conformity with the Development Plan prepared by Lumsden Associates, P.C. dated August 8, 2015 and attached hereto as Exhibit A ("Development Plan") subject to those changes which may be required by the City of Roanoke during comprehensive development plan review.
 3. Freestanding signs newly installed on the property shall meet the signage requirements of the CN zoning district in effect at the time application for the new sign installation is made. This does not restrict the repair or replacement of freestanding signs in existing locations.

Considerations

Surrounding Zoning and Land Use:

	Zoning District	Land Use
North	CN, Commercial-Neighborhood District	Medical Clinic
South	MX, Mixed Use District	Eating Establishment and Motel
East	CN, Commercial-Neighborhood District	Retail sales, office
West	RM-1, Residential Mixed Density District	Single-family detached dwellings

Compliance with the Zoning Ordinance:

The purpose of the CG District is to permit motor vehicle dependent uses that are generally developed as single use developments on individual lots, subject to landscaping, access, and signage standards. Such development is generally characterized by individual curb cuts, access drives, and signage. It is intended that this district be applied primarily along heavily traveled arterial streets, with an emphasis on clustering such development at major intersections. While recognizing the motor vehicle traffic generated by the uses permitted in this district, it is the intent of the regulations of the district to encourage and recognize pedestrian access and public transit forms of transportation by locating parking to the side and rear of buildings and minimizing conflict through landscaping and signage standards. The uses permitted in this district generally require a high volume of traffic along the frontage of the establishment and include horizontally oriented buildings. Such permitted uses include general retail establishments, offices, service establishments, motor vehicle related sales and service, eating establishments, and entertainment uses. The CG District is also intended to accommodate travel-oriented uses such as hotels, motels, and gasoline stations.

Motor vehicle sales and service establishments, used, have supplemental regulations that must be met to comply with the current zoning ordinance. The regulations include a minimum lot size of 15,000 square feet, improved surfaces for motor vehicle display, display areas a minimum of five feet from side or rear property lines, and an eight foot landscaping strip with particular plantings along any adjacent street right-of-way.

The proffered development plan submitted by the applicant would bring both of the properties into conformance with these supplemental regulations. Additional site development features that are required or regulated by the zoning ordinance are not all shown on the development plan. These details will be finalized during the development review process.

Conformity with the Comprehensive Plan and Neighborhood Plan:

Both *Vision 2001-2020* and the *Williamson Road Area Plan* encourage redevelopment of existing underused sites. The existing used motor vehicle sales establishment along Williamson Road seeks to expand onto the existing lot with building on the corner of Williamson and Liberty Roads, but cannot as the use is not permitted under the current CN zoning. The properties are part of an area denoted as a potential village center in the plans. Village center areas are typified by a high-density of neighborhood-oriented commercial activity such as retail, office and residential uses with buildings set close to the street and parking located to the side or rear of principal buildings. While the use is not typical of a village center, the change would bring the existing business into better compliance with the policies regarding neighborhood centers with the building set close to the street, pedestrian activity strengthened by the addition of a sidewalk to the property, and the parking for the business located to the side of the principal building.

Relevant *Vision 2001-2020* policies:

- **ED P6. Commercial development.** Roanoke will encourage commercial development in appropriate areas of Roanoke to serve the needs of citizens and visitors.
- **Design principles:**
 - Higher-density residential development should be concentrated within and immediately adjacent to village centers; housing density should decrease with distance away from the village center.
 - Buildings should be set close to the street with ground-floor facades that emphasize pedestrian activity.
 - Village centers should have broad sidewalks that provide strong pedestrian links into the surrounding neighborhood. Streets and streetscapes should promote pedestrian activity.
 - Parking should be located on the street or to the rear or side of principal buildings, and on-street parking should be encouraged.

Relevant *Williamson Road Area Plan* policies:

- **Community Design Policies**
 - **Commercial zoning:** General commercial and light industrial zoning will be limited within the area to locations where existing land uses and scale of development reflect the purpose of those zoning districts. In areas between identified nodes/clusters, zoning should be changed to less intense uses such as light commercial or

residential. Future expansions of general commercial zoning will be discouraged except where they reinforce identified nodes or strategic initiatives.

- Relationships between commercial and residential uses can and should be harmonious. Businesses, as the more intense of the uses, should design their sites to ensure the necessary activities of commerce do not spill over to residential properties.
- Strategic Initiatives
 - Williamson at Liberty - Here, a turn in the street's alignment creates an identifiable transition point along Williamson Road. Existing development on the northwest and southeast corners establishes a foundation for future village center development.
- Economic Development Policies
 - A network of commercial nodes will be established along major corridors. Areas between these centers will be encouraged to transition to lower intensity commercial uses, high density residential uses, or a mixture thereof.
- Transportation Policies
 - Sidewalks and curbing will be provided on all arterial and collector streets. Roanoke should work to ensure these streets will have a continuous system of sidewalks and curbing.

Although future expansions of general commercial zoning areas and intensification of existing commercial zoning areas is discouraged in the neighborhood plan, the proposed rezoning, with conditions, offers several benefits to the area. Rezoning to CG with proffered conditions allows an existing business along Williamson Road to expand, while simultaneously improving the existing and new site with a new sidewalk along Williamson to improve the pedestrians ability to safely walk along this section of the block, a landscape buffer area between the display area and Williamson Road to beautify the property, a buffer area along the rear of the property line to protect the adjacent residential properties, and restrictions on future freestanding signage in keeping with signage in the CN District. All things considered, the proposed change provides many benefits while protecting against inappropriate intensification caused by such a change.

Public Comments:

None.

Planning Commission Work Session:

None.

Planning Commission Public Hearing:

None.

Chad A. Van Hyning / tmc

Chad A. Van Hyning, Chair
City Planning Commission

cc: Chris Morrill, City Manager
R. Brian Townsend, Assistant City Manager
Chris Chittum, Director of Planning Building & Development
Ian D. Shaw, Planning Commission Agent
Daniel J. Callaghan, City Attorney
Steven J. Talevi, Assistant City Attorney
David L. Hunter, Hunter Real Estate Group, LLC
Maryellen Goodlatte, Glenn Feldmann Darby & Goodlatte

Zoning Amendment

Application RECEIVED



ROANOKE

Department of Planning, Building and Development
Room 166, Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Phone: (540) 853-1730 Fax: (540) 853-1230

AUG 31, 2015

CITY OF ROANOKE
PLANNING BUILDING &
DEVELOPMENT

[Click Here to Print](#)

Date: August 31, 2015

Submittal Number: Original Application

Request (select all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Rezoning, Not Otherwise Listed | <input type="checkbox"/> Amendment of Proffered Conditions |
| <input checked="" type="checkbox"/> Rezoning, Conditional | <input type="checkbox"/> Amendment of Planned Unit Development Plan |
| <input type="checkbox"/> Rezoning to Planned Unit Development | <input type="checkbox"/> Amendment of Comprehensive Sign Overlay District |
| <input type="checkbox"/> Establishment of Comprehensive Sign Overlay District | |

Property Information:

Address: 2514 and 2518 Williamson Road, N.E., Roanoke, VA 24012

Official Tax No(s): 3090227 and 3090225

Existing Base Zoning:

(If multiple zones, please manually enter all districts.)

CN, Commercial-Neighborhood

☐ With Conditions

☒ Without Conditions

Ordinance No(s). for Existing Conditions (If applicable):

Requested Zoning: CG, Commercial-General

☒ With Conditions

☐ Without Conditions

Proposed

Land Use:

Motor vehicle sales and
service establishment, used

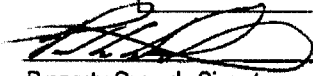
Property Owner Information:

Name: Hunter Real Estate Group, LLC

Phone Number: +1 (540) 793-1173

Address: 2514 Williamson Road, N.E., Roanoke, VA 24012

E-Mail: contactdavehunter@gmail.com


Property Owner's Signature: David L. Hunter, Sole Member/Manager

Applicant Information (if different from owner):

Name:

Phone Number:

Address:

E-Mail:

Applicant's Signature:

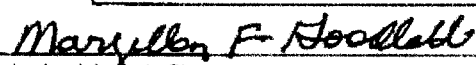
Authorized Agent Information (if applicable):

Name: Maryellen F. Goodlatte, Esq.

Phone Number: +1 (540) 224-8018

Address: Glenn Feldmann, et al., P. O. Box 2887, Roanoke, VA 24001-2887

E-Mail: mgoodlatte@glennfeldmann.com


Authorized Agent's Signature:

Zoning Amendment Application Checklist



The following must be submitted for all applications:

- ☒ Completed application form and checklist.
- ☒ Written narrative explaining the reason for the request.
- ☐ Metes and bounds description, if applicable.
- ☒ Filing fee.

For a rezoning not otherwise listed, the following must also be submitted:

- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures.

For a conditional rezoning, the following must also be submitted:

- ☒ Written proffers. See the City's Guide to Proffered Conditions.
- ☒ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures. Please label as 'development plan' if proffered.

For a planned unit development, the following must also be submitted:

- ☐ Development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.

For a comprehensive sign overlay district, the following must be submitted:

- ☐ Comprehensive signage plan meeting the requirements of Section 36.2-336(d)(2) of the City's Zoning Ordinance.

For an amendment of proffered conditions, the following must also be submitted:

- ☐ Amended development or concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures, if applicable.
- ☐ Written proffers to be amended. See the City's Guide to Proffered Conditions.
- ☐ Copy of previously adopted Ordinance.

For a planned unit development amendment, the following must also be submitted:

- ☐ Amended development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a comprehensive sign overlay amendment, the following must also be submitted:

- ☐ Amended comprehensive signage plan meeting the requirements of Section 36.2-336(d) of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a proposal that requires a traffic impact study be submitted to the City, the following must also be submitted:

- ☐ A Traffic Impact Study in compliance with Appendix B-2(e) of the City's Zoning Ordinance.

For a proposal that requires a traffic impact analysis be submitted to VDOT, the following must also be submitted:

- ☐ Cover sheet.
- ☐ Traffic impact analysis.
- ☐ Concept plan.
- ☐ Proffered conditions, if applicable.
- ☐ Required fee.


*An electronic copy of this application and checklist can be found at www.roanokeva.gov/pbd by selecting 'Planning Commission' under 'Boards and Commissions'. A complete packet must be submitted each time an application is amended, unless otherwise specified by staff.

CERTIFICATE

This is to confirm that I am the sole member/manager of Hunter Real Estate Group, LLC (the "Company"), and am authorized to sign documents on behalf of the company including, but not limited to, the Zoning Amendment Application submitted to the City of Roanoke, Virginia, with respect to Roanoke City Tax Map Parcels 3090227 and 3090225. A true copy of the operating agreement of the Company is attached hereto.

Dated this 31 day of August, 2015.

HUNTER REAL ESTATE GROUP, LLC

By: 
David L. Hunter
Its: Sole Member/Manager

**OPERATING ARRANGEMENT
OF
HUNTER REAL ESTATE GROUP, LLC
LIMITED LIABILITY COMPANY
COMMONWEALTH OF VIRGINIA**

THIS OPERATING ARRANGEMENT is hereby established this 19th day of June, 2012, by David L. Hunter, Initial Member.

The Initial Member contemplates that additional Members may join the limited liability company in the future, and the following Operating Arrangement has therefore been developed.

**ARTICLE I
FORMATION OF LIMITED LIABILITY COMPANY**

1. **Formation of LLC.** The Initial Member has formed a limited liability company in the Commonwealth of Virginia named Hunter Real Estate Group, LLC ("LLC"). The operation of the LLC shall be governed by the terms of this Arrangement and the applicable laws of the Commonwealth of Virginia relating to the formation, operation and taxation of an LLC. To the extent permitted by law, the terms and provisions of this Arrangement shall control if there is a conflict between State law and this Arrangement. The LLC shall be taxed as a sole proprietorship until and unless additional Members are added, after which the LLC will be taxed as a partnership. Any provisions of this Arrangement that may cause the LLC not to be taxed as a sole proprietorship or partnership shall be inoperative.
2. **Articles of Organization.** The Initial Member has caused to be filed Articles of Organization ("Articles") of record with the Commonwealth, thereby creating the LLC.
3. **Business:** The business of the LLC shall be:
 - a. To purchase, lease, sell, own, and manage real estate; and
 - b. To conduct or promote any lawful businesses or purposes that a limited liability company is legally allowed to conduct or promote, within this Commonwealth or any other jurisdiction.
4. **Registered Office and Registered Agent:** The registered office of the LLC shall be 324 Washington Avenue, SW, Roanoke, VA 24016, and the Registered Agent at such office shall be Bettina C. Altizer, Esq. The registered office and Registered Agent may be changed from time to time.
5. **Duration.** The LLC will commence business as of the date of filing its Articles and will continue in perpetuity.
6. **Fiscal Year.** The LLC's fiscal and tax year shall end December 31.

ARTICLE II MEMBERS

7. **Initial Member.** The Initial Member of the LLC is David L. Hunter.
8. **Additional Members.** The first new Member, or new Members if several are to be added simultaneously, may be admitted only upon the approval of the Initial Members. Following the addition of a Member or Members, further new may be admitted only upon the consent of a majority of the existing Members and upon compliance with the provisions of this Arrangement

ARTICLE III MANAGEMENT

9. **Management.** The Initial Members shall manage the LLC, and shall have authority to take all necessary and proper actions to conduct the business of the LLC. Anyone authorized by the Initial Members may take any authorized action on behalf of the LLC.

ARTICLE IV CONTRIBUTIONS PROFITS, LOSSES, AND DISTRIBUTIONS

10. **Interest of Member.** Each Member shall own a percentage interest (sometimes referred to as a share) in the LLC. The Member's percentage interest shall be based on the amount of cash or other property that the Member has contributed to the LLC and that percentage interest shall control the Member's share of the profits, losses, and distributions of the LLC.
11. **Initial Contribution.** The initial contribution of the Initial Member is \$500.00, representing a 100% interest in the LLC.
12. **Additional Contributions.** In the event additional Members are added, upon a majority vote, the Members may be called upon to make additional cash contributions as may be necessary to carry on the LLC's business. The amount of any additional cash contribution shall be based on the Member's then existing percentage interest. To the extent a Member is unable to meet a cash call, the other Members can contribute the unmet call on a pro rata basis based on the Members' percentage interests at that time, and the percentage interest of each member will be adjusted accordingly.
13. **Record of Contributions/Percentage Interests.** A record shall be kept of all contributions to, and percentage interests in, the LLC. This Arrangement, any amendment(s) to this Arrangement, and all Resolutions of the Members of the LLC shall constitute the record of the Members of the LLC and of their respective interest therein.
14. **Profits and Losses.** The profits and losses and all other tax attributes of the LLC shall be allocated to the Initial Member until such time as additional Members are added at which time, the profits and losses and all other tax attributes of the LLC shall be allocated to the Members on the basis of the Members' percentage interest in the LLC.

15. **Distributions.** Any Distributions of cash or other assets of the LLC (other than in dissolution of the LLC) shall be made in the total amounts and at the times as determined by the Initial Member. Should additional Members be added, distributions of cash or other assets of the LLC (other than in dissolution of the LLC) shall be made in the total amounts and at the times as determined by a majority of the Members. Any such distributions shall be allocated among the Members on the basis of the Members' percentage interests in the LLC.

16. **Change in Interests.** In the event additional Members are added, and if during any year there is a change in a Member's percentage interest, the Member's share of profits and losses and distributions in that year shall be determined under a method which takes into account the varying interests during the year.

ARTICLE V VOTING; CONSENT TO ACTION

17. **Voting by Member.** Until such time as additional Members are added, all decisions will be made by the Initial Member. Should additional Members be added, each Member shall be entitled to vote on any matter voted on by the Members. Voting shall be based on the percentage interest owned by each Member. The action may be taken with or without a meeting.

18. **Majority Defined.** As used throughout this Arrangement the term "majority" of the Members shall mean a majority of the ownership interest in the LLC as determined by the records of the LLC on the date of the action. For example, if one Member with a 51% interest votes for passage, and five Members with a combined 49% interest vote against passage, the majority has voted for passage because 51% of the ownership interest voted for passage.

Similarly, a reference to a percentage of the Members, for example: "75% of the Members," shall mean a percentage of the ownership interest of the LLC.

19. **Majority Required.** Should additional Members be added, any action that requires the vote or consent of the Members may be taken upon a majority vote of the Members, based on the Members' percentage interests unless unanimous consent is required by this Arrangement.

20. **Meetings – Written Consent.** Action of the Member or Officers may be accomplished with or without a meeting. If a meeting is held, evidence of the action shall be by Minutes or Resolution reflecting the action of the Meeting, signed by a majority of the Members, or the Present and Secretary. Action without a meeting may be evidenced by a written consent signed by a majority of the Member.

21. **Meetings.** Meetings of the Members shall be held as determined by the Members or as may be called by a majority of the Members, or if a Manager was selected, then by the Manager of the LLC, or if Officers were elected or appointed, by any Officer.

ARTICLE VI DISSOCIATION OF MEMBERS

22. Termination of Membership. A Member's interest in the LLC shall cease upon the occurrence of one or more of the following events:

- (a) A Member withdraws by giving the LLC thirty (30) days written notice in advance of the withdrawal date. Withdrawal by a Member is not a breach of this Arrangement.
- (b) A Member assigns all of his/her interest (and not merely a partial interest) to a qualified third party.
- (c) A Member dies.
- (d) There is an entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage his/her person or his/her estate.
- (e) In the case of an estate that is a Member, the distribution by the fiduciary of the entity's entire interest in the LLC.
- (f) In the case of an entity that is a Member, the distribution upon dissolution of the entity's entire interest in the LLC.
- (g) A Member, without the consent of a majority of the Members: (1) makes an assignment for the benefit of creditors; (2) files a voluntary petition in bankruptcy; (3) is adjudicated bankrupt or insolvent; (4) files a petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (5) files an answer or other pleading, admitting, or failing to contest the material allegations of a petition filed against him in any proceeding of the nature described in this paragraph; (6) seeks, consent to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of his properties; or (7) if any creditor permitted by law to do so should commence foreclosure or take any other action to seize or sell any Member's interest in the LLC.
- (h) If within one hundred twenty (120) days after the commencement of any action against a Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the action has not been dismissed and/or has not been consented to by a majority of the Members.
- (i) If within ninety (90) days after the appointment, without a Member's consent or acquiescence, of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's properties, said appointment is not vacated or within ninety (90) days after the expiration of any stay, the appointment is not vacated and/or has not been consented to by a majority of the Members.

- (j) Any of the event provided in applicable provisions of state or federal law that are not inconsistent with the dissociation events identified above.

23. **Effect of Dissociation.** Any dissociated Member shall not be entitled to receive the fair value of his LLC interest solely by virtue of his dissociation. A dissociated Member that still owns an interest in the LLC shall be entitled to continue to receive such profits and losses, to receive such distribution or distributions, and to receive such allocations of income, gain, loss, deduction, credit or similar items to which he would have been entitled if still a Member. For all other purposes, a dissociated Member shall no longer be considered a Member and shall have no rights of a Member.

**ARTICLE VII
RESTRICTIONS ON TRANSFERABILITY OF LLC INTEREST;
SET PRICE FOR LLC INTEREST**

24. **LLC Interest.** The LLC interest is personal property. A Member has no interest in the property owned by the LLC.

25. **Encumbrance.** A Member can encumber his LLC interest by a security interest or other form of collateral only with the consent of a majority of the other Members. Such consent shall only be given if the proceeds of the encumbrance are contributed to the LLC to respond to a cash call of the LLC.

26. **Sale of Interest.** A Member can sell his LLC interest only as follows:

- (a) If a Member desires to sell his/her interest, in whole or in part, he/she shall give written notice to the LLC of his/her desire to sell all or part of his/her interest and must first offer the interest to the LLC. The LLC shall have the option to buy the offered interest at the then existing Set Price as provided in this Arrangement. The LLC shall have thirty (30) days from the receipt of the assigning Member's notice to give the assigning Member written notice of its intention to buy all, some, or none of the offered interest. The decision to buy shall be made by a majority of the other Members. Closing on the sale shall occur within sixty (60) days from the date that the LLC gives written notice of its intention to buy. The purchase price shall be paid in cash at closing unless the total purchase price is in excess of \$10,000.00 in which event the purchase price shall be paid in four (4) equal quarterly installments beginning with the date of closing. The installment amounts shall be computed by applying the following interest factor to the principal amount: interest compounded quarterly at the Quarterly Federal Short-Term Rate existing at closing under the Applicable Federal Rates used for purposes of Internal Revenue Code § 1274(d), or any successor provision.
- (b) To the extent the LLC does not buy the offered interest of the selling Member, the other Members shall have the option to buy the offered interest at the Set Price on a pro rata basis based on the Members' percentage interests at that time. If a Member

does not desire to buy up to his/her proportional part, the other Members can buy the remaining interest on the same pro rata basis. Members shall have fifteen (15) days from the date the LLC gives its written notice to the selling Member to give the selling Member notice in writing of their intention to buy all, some, or none of the offered interest. Closing on the sales call occur within sixty (60) days from the date that the Members give written notice of their intention to buy. The purchase price from each purchasing Member shall be paid in cash at closing.

- (c) To the extent the LLC or the Members do not buy the offered interest, the selling Member can then assign the interest to a non-Member. The selling Member must close on the assignment within ninety (90) days of the date that he gave notice to the LLC. If he does not close by that time, he must again give the notice and options to the LLC and the LLC Members before he sells the interest.
- (d) A non-Member purchaser of a Member's interest cannot exercise any rights of a Member unless a majority of the non-selling Members consent to him becoming a Member. The non-Member purchaser will be entitled, however, to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, credit or similar items to which the selling Member would be entitled, to the extent of the interest assigned, and will be subject to calls for contributions under the terms of this Arrangement. The purchaser, by purchasing the selling Member's interest, agrees to be subject to all the terms of this Arrangement as if he were a Member.

27. **Set Price.** The Set Price for Purposes of this Arrangement shall be the price fixed by consent of a majority of the Members. The Set Price shall be memorialized and made a part of the LLC records. The initial Set Price for each Member's interest is the amount of the Member's contribution(s) to the LLC, as updated in accordance with the terms hereof. Any future changes in the Set Price by the Members shall be based upon net equity in the assets of the LLC (fair market value of the assets less outstanding indebtedness), considering the most recent appraisal obtained by the LLC for its assets, as may be adjusted by the Members in their discretion. The initial Set Price shall be adjusted upon demand by a Member but not more than once a year unless all Members consent. This basis for determining the Set Price shall remain in effect until changed by consent of a majority of the Members. The Members will consider revising the basis for determining the Set Price at least annually.

ARTICLE VIII OBLIGATION TO SELL ON A DISSOCIATION EVENT CONCERNING A MEMBER

28. **Dissociation.** Except as otherwise provided, upon the occurrence of a dissociation event with respect to a Member, the LLC and the remaining Members shall have the option to purchase the dissociated Member's interest at the Set Price in the same manner as provided herein and as if the dissociated Member had notified the LLC of his desire to sell all of his LLC interest. The date the LLC received the notice as provided herein triggering the options shall be deemed to be the date that the LLC receives actual notice of the dissociation event.

ARTICLE IX DISSOLUTION

29. Termination of the LLC. The LLC will be dissolved and its affairs must be wound up only upon such a decision by the Initial Members, provided no new Members have been added, or upon the written consent of seventy-five percent (75%) of all Members should additional Members be added.

30. Final Distributions. Upon the winding up of the LLC, the assets must be distributed as follows: (1) to the LLC creditors; (b) to Members in satisfaction of liabilities for distributions; and (c) to Members first for the return of their contributions and secondly respecting their LLC interest, in the proportions in which the Members share in profits and losses.

ARTICLE X TAX MATTERS

31. Capital Accounts. Capital accounts shall be maintained consistent with Internal Revenue Code § 704 and the regulations thereunder.

32. Sole Proprietorship/Partnership Election. The Initial Members elect that the LLC be taxed as a sole proprietorship, and that if additional Members are admitted, the LLC be taxed as a partnership. Any provisions of this Arrangement that may cause the LLC not to be taxed as a sole proprietorship or partnership shall be inoperative.

ARTICLE XI RECORDS AND INFORMATION

33. Records and Inspection. The LLC shall maintain at its place of business the Articles of Organization, any amendments thereto, this Arrangement, and all other LLC records required to be kept by applicable law, and the same shall be subject to inspection and copying at the reasonable request, and at the expense, of any Member.

34. Obtaining Additional Information. Subject to reasonable standards, each Member may obtain from the LLC from time to time upon reasonable demand for any purpose reasonably related to the Member's interest as a Member in the LLC: (1) information regarding the state of the business and financial condition of the LLC; (2) promptly after becoming available, a copy of the LLC's federal, state, and local income tax returns for each year; and (3) other information regarding the affairs of the LLC as is just and reasonable.

ARTICLE XII MISCELLANEOUS PROVISIONS

35. Amendment. Except as otherwise provided in this Arrangement, any amendment to this Arrangement may be proposed by a Member. Unless waived by the Members, the proposing Member shall submit to the Members any such proposed amendment together with an opinion of counsel as to the legality of such amendment and the recommendation of the Member as to its

adoption. A proposed amendment shall become effective at such time as it has been approved in writing by a majority of the Members. This Arrangement may not be amended nor may any rights hereunder be waived except by an instrument in writing signed by the party sought to be charged with such amendment or waiver, except as otherwise provided in this Arrangement.

36. Applicable Law. To the extent permissible by law, this Arrangement shall be construed in accordance with and governed by the laws of the State of Virginia.

37. Pronouns, Etc. References to a Member or Manager, including by use of a pronoun, shall be deemed to include masculine, feminine, singular, plural, individuals. Partnerships, corporations or other business entities, where applicable

38. Counterparts. This instrument may be executed in any number of counterparts each of which shall be considered an original.

39. Specific Performance. Each Member agrees with the other Members that the other Members would be irreparably damaged if any of the provisions of this Arrangement are not performed in accordance with their specific terms and that monetary damages would not provide an adequate remedy in such event. Accordingly, it is agreed that, in addition to any other remedy to which the non-breaching Members may be entitled, at law or in equity, the non-breaching Members shall be entitled to injunctive relief to prevent breaches of this Arrangement and, specifically, to enforce the terms and provisions of this Arrangement in any action instituted in any court of the United States or any State thereof having subject matter jurisdiction thereof.

40. Further Action. Each Member, upon the request of the LLC, agrees to perform all further acts and to execute, acknowledge and deliver any documents which may be necessary, appropriate, or desirable to carry out the provisions of this Arrangement.

41. Method of Notices. All written notices required or permitted by this Arrangement shall be hand-delivered or sent by registered or certified mail, postage prepaid, addressed to the LLC at its place of business or to a Member as set forth on the Member's signature page of this Arrangement (except that any Member may from time to time give notice changing his address for that purpose), and shall be effective when personally delivered or, if mailed, on the date set forth on the receipt of registered or certified mail.

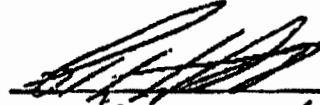
42. Facsimiles. For purposes of this Arrangement, any copy, facsimile, telecommunication or other reliable reproduction of a writing, transmission or signature may be substituted or used in lieu of the original writing, transmission or signature for any and all purposes for which the original writing, transmission or signature could be used, provided that such copy, facsimile, telecommunication or other reproduction shall have been confirmed received by the sending Party.

43. Computation of Time. In computing any period of time under this Arrangement, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday,

Sunday or legal holiday, in which even the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

WHEREFORE, the Initial Member, being the only Member of this LLC, has executed this Arrangement on the 19th day of June, 2012.

Signed:



Print Name:

DAVID LEE HUNTER

Address:

4971 LANTERN ST

Pocono Lake, PA 24019

NARRATIVE

For many years a used car lot has been operating at 2514 Williamson Road. That parcel is zoned CN, with the used car lot use being grandfathered. In 2014 the applicant acquired ownership of that parcel and began a process of updating and cleaning the lot. The applicant also acquired the adjoining property in 2014. The property at 2518 Williamson Road is also zoned CN.

Rather than simply continuing the grandfathered use on 2514 Williamson Road, the applicant wishes to rezone it, as well as 2518 Williamson Road, to a conditional CG district in order to more fully integrate and enhance both parcels, visually as well as operationally. The small office building currently located on 2514 Williamson Road, which serves customers and employees of the used car lot, will be demolished. Instead, the office building at 2518 Williamson Road will serve customer as well as business needs. In addition to providing sales support to customers and employees of the car lot, the building at 2518 Williamson Road is large enough to provide a centralized payment center for customers, as well as a warranty claims office and, potentially, space for insurance provider(s). Some cosmetic improvements to that building will be made, but its footprint will not be enlarged. Once the small office building on 2514 Williamson Road is demolished, security lighting will be placed on the side of the building at 2518 Williamson Road to replace the security lighting on the demolished building.

As a consequence of rezoning the properties, the applicant will add a sidewalk along Williamson Road so as to connect two sidewalk segments now separated by a grass path, plus related street landscaping. As shown on the Development Plan, the applicant will also install a landscape buffer between its properties and its residential adjoiners.

In addition to proffering the Development Plan, the applicant is proffering the specific uses to which the parcels could be put. That list consists only of uses allowed in both the CN and CG districts plus the use categories specific to the applicant's motor vehicle sales and service operations.

As evidenced by the enclosed letter from the neighboring owner sharing the longest common boundary line, the applicant's efforts to date in updating and cleaning the used car lot as well as its future plans for the properties have garnered neighbor support.

JAMES M. FRALIN
26 Brookview Circle
Daleville, Virginia 24083

August 26, 2013

Members of the Planning Commission
City of Roanoke
166 Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011

Members of the City Council
City of Roanoke
Municipal Building
215 Church Avenue
Roanoke, Virginia 24011

Re: Proposed rezoning of property at 2514 and 2518 Williamson Road, N.E.

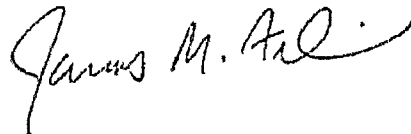
Dear Ladies and Gentlemen:

I own residential property at 2713 Liberty Road which is located directly behind the properties at 2514 and 2518 Williamson Road. I have seen how Mr. Hunter has already begun improving the condition of the used car dealership which has been operating for many years at 2514 Williamson Road. He has advised me of his plans to remove the small office building which currently serves the used car lot at 2514 Williamson Road and incorporate his business operations into the building at 2518 Williamson Road. I also understand that he will place floodlights on the building at 2518 Williamson Road in order to provide security for the car lot once the floodlights currently located on the 2514 small office building are removed.

I am in full support of the rezoning application. The landscape buffer which will be located on Mr. Hunter's property alongside mine is much appreciated. I also applaud the extension of the sidewalk on Williamson Road shown on Mr. Hunter's plan since that extension will link the existing sidewalk segments.

Mr. Hunter and his business have been very good neighbors. I encourage you to approve this application.

Very truly yours,

A handwritten signature in dark ink, appearing to read "James M. Fralin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

**PROFFERS TO BE ADOPTED
ON
ROANOKE CITY TAX PARCEL NOS. 3090225 AND 3090227**

1. The property shall be used only for the following uses:
 - A. The following uses which are permitted of right in both the CN and CG zoning districts:
 1. Business service establishment, not otherwise listed
 2. Financial institution
 3. Laboratory, dental, medical, or optical
 4. Medical clinic
 5. Office, general or professional
 6. Office, general or professional, large scale
 7. Animal hospital or veterinary clinic, no outdoor pens or runs
 8. Community market
 9. Live-work unit
 10. Mixed-use building
 11. Studio/multimedia production facility
 12. Bakery, confectionary, or similar food production, retail
 13. Body piercing establishment
 14. Dry cleaning and laundry pick-up station
 15. General service establishment, not otherwise listed
 16. Internet sales establishment
 17. Laundromat
 18. Motor vehicle rental establishment, without inventory on-site
 19. Personal service establishment, not otherwise listed
 20. Pet grooming
 21. Retail sales establishment, not otherwise listed
 22. Tattoo parlor
 23. Club, lodge, civic, or social organization
 24. Community center
 25. Eating establishment
 26. Health and fitness center
 27. Meeting hall
 28. Park or playground
 29. Place of worship
 30. Theater, movie or performing arts
 31. Artist studio
 32. Community garden
 33. Day care center, adult
 34. Day care center, child
 35. Educational facilities, business school or nonindustrial trade school
 36. Educational facilities, elementary/middle/secondary

- 37. Educational facilities, school for the arts
- 38. Fire, police, or emergency services
- 39. Government offices or other government facility, not otherwise listed
- 40. Library
- 41. Museum
- 42. Post office
- 43. Broadcasting studio or station
- 44. Utility distribution or collection, basic
- 45. Wireless telecommunications facility, stealth
- 46. Accessory uses, not otherwise listed
- 47. Outdoor display area

and

B. The following additional uses:

- 48. Motor vehicle rental establishment, with inventory on site
 - 49. Motor vehicle (motorcycle) sales and service establishment, new
 - 50. Motor vehicle sales and service establishment, used
- 2. The property shall be developed in substantial conformity with the Development Plan prepared by Lumsden Associates, P.C. dated August 8, 2015 and attached hereto as Exhibit A ("Development Plan") subject to those changes which may be required by the City of Roanoke during comprehensive development plan review.
 - 3. Freestanding signs newly installed on the property shall meet the signage requirements of the CN zoning district in effect at the time application for the new sign installation is made. This does not restrict the repair or replacement of freestanding signs in existing locations.

A LANDSCAPING STRIP A MINIMUM OF 8' IN DEPTH SHALL BE PROVIDED ALONG THE ADJACENT STREET RIGHT-OF-WAY PURSUANT TO SEC. 36.2-21. EVERGREEN OR DECIDUOUS SHRUBS SHALL BE PLANTED WITHIN THE STRIP, SPACED NO GREATER THAN THREE (3) FEET ON CENTER, WITH A MINIMUM HEIGHT OF 24" AT TIME OF PLANTING. NO FENCING, STORAGE OR DISPLAY OF VEHICLES SHALL ENOUGH UPON THE LANDSCAPE STRIP IN ANY MANNER.



TAX #1090240
B & E, LLC
INSTRUMENT #000011048
D.B. 1514, PG. 49 (PLAT)
ZONED CN

TAX #3090227
LOT 3A

PART OF LOTS 1 &
13,491 S.F.
ZONED CN

(C) 1 = 120°43'40"
2 = 20.04
3 = 35.22
4 = 42.23
ARG. 5 7713'58" E
340. 34.84

PROPOSED DEVELOPMENT SUMMARY

PROPOSED ZONING: CG DISTRICT
MINIMUM LOT AREA: 10,000 SF
PROPOSED LOT AREA: 8,045 AC (35,042 SF)
MINIMUM LOT FRONTAGE: 100'
PROPOSED LOT FRONTAGE: 429.70'
MINIMUM FRONT YARD: 0'
EXISTING FRONT YARD: 30'
REQUIRED SIDE YARD: 0'
REQUIRED SIDE YARD: 0'
FLOOR AREA RATIO MAXIMUM: 5.0
MAX. IMPERVIOUS SURFACE AREA: 85%
MINIMUM PARKING REQUIREMENT APPLIES
MINIMUM TREE CANOPY: 10%

LANDSCAPE BUFFER ADJACENT TO RM-1 DISTRICT

AN EVERGREEN TREE SCREEN WILL BE INSTALLED IN AN 8' BUFFER YARD ALONG THE PROPERTY LINES OF ADJACENT PARCELS ZONED RM-1 (SEC. 36.2-647, TABLE 647-1). EVERGREEN TREES SHALL BE A MINIMUM OF 6' IN HEIGHT AT TIME OF PLANTING, AND SHALL BE PLANTED IN A SINGLE ROW, SPACED ON 5' CENTERS.

EXHIBIT "A"
DEVELOPMENT PLAN

PROPERTY OF
HUNTER REAL ESTATE GROUP, LLC
SITUATED AT 2514 & 2518 WILLIAMSON ROAD
CITY OF ROANOKE, VIRGINIA

GRAPHIC SCALE

SCALE: 1" = 30'

DATE:	August 8, 2015
COMM. NO.:	15-115
SCALE:	1" = 30'

PHONE: (540) 774-4411
FAX: (540) 772-9445
E-MAIL: MAIL@LUMSDENPC.COM

4664 BRAMBLETON AVENUE
P.O. BOX 20669
ROANOKE, VIRGINIA 24018

LUMSDEN ASSOCIATES, P.C.
ENGINEERS-SURVEYORS-PLANNERS
ROANOKE, VIRGINIA

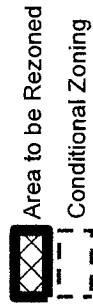


ZONING DISTRICT MAP

2514 & 2518 Williamson Road NE

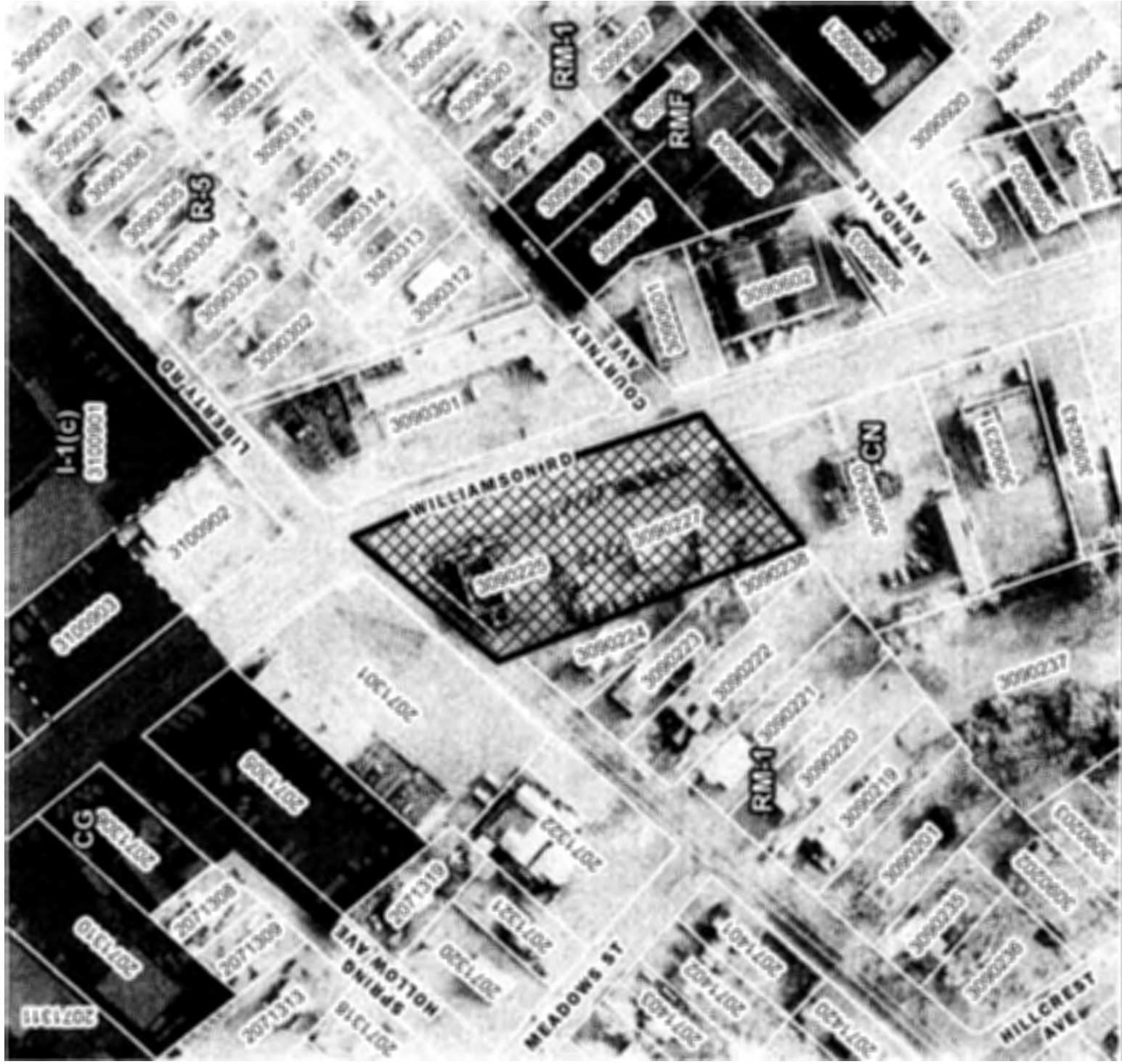
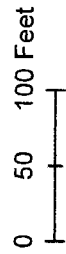
Official Tax Parcels:

3090227 & 3090225



Zoning

- RA (Residential-Agriculture)
- R-12 (Res. Single-Family)
- R-7 (Res. Single-Family)
- R-5 (Res. Single-Family)
- R-3 (Res. Single-Family)
- RM-1 (Res. Mixed Density)
- RM-2 (Res. Mixed Density)
- RMF (Res. Multi-Family)
- CN (Commercial-Neigh)
- CG (Commercial-General)
- CLS (Commercial-Large Site)
- I-1 (Light Industrial)
- I-2 (Heavy Industrial)
- D (Downtown)
- MX (Mixed Use)
- IN (Institutional)
- ROS (Rec & Open Space)
- AD (Airport Dev)
- MXPUD (Mixed Use Planned Unit Dev)
- INPUD (Institutional Planned Unit Dev)
- IPUD (Industrial Planned Unit Dev)
- UF (Urban Flex)



55
12/2/15

C.2.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to rezone certain properties located at 2514 and 2518 Williamson Road, N.E., from CN, Commercial Neighborhood District, to CG, Commercial-General District, subject to certain conditions proffered by the applicant; and dispensing with the second reading of this ordinance by title.

WHEREAS, Hunter Real Estate Group, LLC, has made application to the Council of the City of Roanoke, Virginia ("City Council"), to have the properties located at 2514 and 2518 Williamson Road, N.E., bearing Official Tax Map Nos. 3090227 and 3090225, respectively, rezoned from CN, Commercial Neighborhood District, to CG, Commercial-General District, subject to certain conditions;

WHEREAS, the City Planning Commission, after giving proper notice to all concerned as required by §36.2-540, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to City Council;

WHEREAS, a public hearing was held by City Council on such application at its meeting on October 19, 2015, after due and timely notice thereof as required by §36.2-540, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the proposed rezoning; and

WHEREAS, this Council, after considering the aforesaid application, the recommendation made to City Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, finds that the public

necessity, convenience, general welfare and good zoning practice, require the rezoning of the subject property, and for those reasons, is of the opinion that the hereinafter described property should be rezoned as herein provided.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. Section 36.2-100, Code of the City of Roanoke (1979), as amended, and the Official Zoning Map, City of Roanoke, Virginia, dated December 5, 2005, as amended, be amended to reflect that Official Tax Map Nos. 3090227 and 3090225 located at 2514 and 2518 Williamson Road, N.E., respectively, be, and are hereby rezoned from CN, Commercial Neighborhood District, to CG, Commercial-General District, subject to certain conditions proffered by the applicant, as set forth in the Zoning Amendment Original Application No. 1 dated August 31, 2015.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: Public hearing to amend Sec. 36.2-311, Use table for residential districts, Chapter 36.2, Zoning, of the Code of the City of Roanoke (1979), as amended, as it relates to permitting Accessory Uses, "Home occupation, personal service," in certain residential districts.

Recommendation

The Planning Commission held a public hearing on Monday, October 12, 2015. By a vote of 4 - 0 the Commission recommended approval of the proposed amendment to the Zoning Ordinance.

Background

Roanoke adopted the current amendments to the zoning ordinance in July 2015. A scrivener's error was found after the adoption of the amendment that had inadvertently removed the right to have the accessory use "Home occupation, personal service" in certain residential districts.

Considerations

The proposed amendment corrects the scrivener's error by allowing the accessory use "Home occupation, personal service" in the R-7, Residential Single-Family District; R-5, Residential Single-Family District; and RM-2, Residential Mixed Density District, as was previously allowed before the last text amendment.

District	RA	R-12	R-7	R-5	R-3	RM-1	RM-2	RMF	Supplemental Regulation Section
<i>Accessory Uses</i>									
Home occupation, personal service	P	P	<u>P</u>	<u>P</u>	P	P	<u>P</u>	P	36.2-413

NOTICE:

The Ordinance at Item C. 3. was not available for scanning.



CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council

Meeting: October 19, 2015

Subject: Application from PRMC, LLC, to amend the Planned Unit Development Plan as it pertains to 4414 Pheasant Ridge Road, S.W., bearing Official Tax No. 5460124; 4345 Griffin Road, S.W., bearing Official Tax No. 5470302; four unaddressed lots on Griffin Road, S.W., bearing Official Tax Nos. 5470301, 5470303, 5470304, 5470305; and three unaddressed lots on Van Winkle Road, S.W., bearing Official Tax Nos. 5470306, 5470307, 5470308. The application is to permit construction of buildings housing a sixty-four (64) unit memory care facility and a ninety (90) unit assisted living facility with a changed site configuration than previously permitted by the Institutional Planned Unit Development Plan in connection with the passage of Ordinance No. 40190-031615, adopted by City Council on March 16, 2015.

Recommendation

The Planning Commission held a public hearing on Monday, October 12, 2015. By a vote of 4 – 0 the Commission recommended approval of the rezoning request, finding that the Amended Application No.1 is consistent with the City's Comprehensive Plan and Zoning Ordinance as it maximizes development potential of the site.

Application Information

Request:	Rezoning
Owner:	PR Homes, LLC
Applicant:	PRMC, LLC
Authorized Agent:	James R. Smith
City Staff Person:	Katharine Gray, Land Use and Urban Design Planner
Site Address/Location:	4414 Pheasant Ridge Road, SW; 4345 Griffin Road, SW; four unaddressed lots on Griffin Road, SW; and three unaddressed lots on Van Winkle Road, SW
Official Tax Nos.:	5460124, 5470301, 5470302, 5470303, 5470304, 5470305, 5470306, 5470307, 5470308
Site Area:	Approximately 11.38 acres
Existing Zoning:	INPUD, Institutional Planned Unit Development District
Proposed Zoning:	INPUD, Institutional Planned Unit Development District

<i>Existing Land Use:</i>	Vacant
<i>Proposed Land Use:</i>	Group Care Facility, Congregate Home Group Care Facility, Nursing Home Dwelling, Multifamily, Elderly
<i>Neighborhood Plan:</i>	Southern Hills Neighborhood Plan
<i>Specified Future Land Use:</i>	Mixed Density Residential and Single Family Residential
<i>Filing Date:</i>	Original Application: Sept. 4, 2015 Amended Application No.1: Sept. 22, 2015

Background

In August 2006, the property was rezoned from MX, MX(c) and R-7 to MXPUD. The development plan had six buildings housing 160 condominiums arranged along a driveway designed to appear as a street and included a future wellness center. In May 2007, an amendment of the Planned Unit Development Plan was approved. That amendment modified the previous development plan to add a large retaining wall and buffer strip with plantings to accommodate a stormwater conveyance channel along Griffin Road and Van Winkle Road.

In March 2013, the MXPUD Plan was amended to increase the number of units and add a clubhouse with a pool.

In March 2015, the property was rezoned from MXPUD to INPUD to permit two buildings with 154 units for Group Care Facility, Congregate Home; Group Care Facility, Nursing Home; and Dwelling, Multifamily, Elderly.

In September 2015, PRMC, LLC filed an application to amend their development plan for the property. The development plan shows the change in positions of the one-story 64- unit memory care facility and four-story 90- unit assisted living facility, adjustments to the parking and circulation layout, and changes to landscaping.

Amended Application No.1 was filed to address the completeness of the application.

Conditions Proffered by the Applicant

As an INPUD, the development plan is binding on future development.

Considerations

Surrounding Zoning and Land Use:

	Zoning District	Land Use
North	R-7, Residential Single-Family District	Vacant land and Single-family detached dwellings
South	MXPUD, Mixed Use Planned Unit Development District	Group Care Facility, Congregate Home; Multifamily dwellings, and Office
East	R-7, Residential Single-Family District	Single-family detached dwellings
West	CLS, Commercial-Large Site District and R-7, Residential Single-Family District	Retail sales establishments and Single-family detached dwellings

Compliance with the Zoning Ordinance:

The proposed amended INPUD plan complies with the dimensional regulations of the INPUD district. Not all site development features required or regulated by the zoning ordinance are shown on the development plan and will be finalized during the development review process.

Conformity with the Comprehensive Plan and Neighborhood Plan:

Both *Vision 2001-2020* and the *Southern Hills Neighborhood Plan* recognize the need for infill housing that is compatible with the surrounding area. The site is part of a larger mixed-use development that is bordered by commercial along U.S. Route 220 to the southwest and single-family residential to the northeast. The property is within a transition zone between the single-family residential to the northeast and the office and multifamily residential portions of the larger mixed-use development. The multiple parcels within the property contain vacant land and a single residential structure. The change in development plan will fill in this vacant portion of property with additional multifamily and group living accommodations reflective of the larger overall Pheasant Ridge development along the Griffin Road and Van Winkle Road portion of the property.

Relevant *Vision 2001-2020* policies:

- *EC P5, Trees.* Roanoke will maintain and increase its tree canopy coverage as a way to improve air quality. Roanoke will work regionally to promote tree planting and tree preservation Valley-wide.

- **NH P5. Housing Choice.** The City will have a balanced, range of housing choices in all price ranges and design options that encourage social and economic diversity throughout the City.

Relevant *Southern Hills Neighborhood Plan* Policies:

Community Design Policies

- New commercial development must consider adjoining uses during site design. Compatibility should be addressed first by thoughtful site and building design rather than by screening alone. Commercial building fronts should be oriented very close to streets. Parking should be to the side or back of buildings. Parking lots should have generous amounts of interior landscaping and tree canopy coverage.

Residential Development Recommendations

- Support continued mixed density residential development in Pheasant Ridge and Southmont.
- Support new residential development that uses traditional urban neighborhood development patterns with urban amenities such as sidewalks and street trees. Such development should be encouraged through appropriate zoning and supporting infrastructure improvements. New developments should accommodate mixed densities (and incomes), and must preserve environmentally sensitive areas to the greatest extent possible.

Quality of Life Recommendations

- Ensure that new development preserves mature trees and incorporates new tree plantings to replace those lost during development.
- Encourage the use of clustered development to avoid development on steep slopes or near parkway lands. New development should design excess capacity in erosion control and stormwater management measures.

The proposed development plan is consistent with or implements many of the comprehensive plan policies cited above. It provides for the continued mixed density development at Pheasant Ridge. It provides for reforestation of the areas of land that are touched but not utilized by redevelopment. The design utilizes materials that are common in residential architecture and provides landscaping along the base of the retaining walls to mask their scale.

Public Comments:

None.

Planning Commission Work Session:

Discussion included the completeness of the application, screening of the surrounding single family residential properties, and a complete walkway system. Commissioners noted the importance of screening.

Amended Application No. 1 addressed issues discussed at the work session. Specifically, the amendment provided a complete application, extended the proposed pedestrian trail system extension to connect to the existing trail system, and provided for screening in the 30' landscape buffer along adjoining Tax Parcel #5470310.

Planning Commission Public Hearing:

None.

Chad A. Van Hynings / tme

Chad A. Van Hyning, Chair
City Planning Commission

cc: Chris Morrill, City Manager
R. Brian Townsend, Assistant City Manager
Chris Chittum, Director of Planning Building & Development
Ian D. Shaw, Planning Commission Agent
Daniel J. Callaghan, City Attorney
Steven J. Talevi, Assistant City Attorney
James R. Smith, PRMC, LLC
Aubury Holmes, Smith/Packett

Application for a Zoning Amendment



Department of Planning, Building and Development
Room 166, Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, Virginia 24011
Phone: (540) 853-1730 Fax: (540) 853-1230

[Click Here to Print](#)

Date: Sep 22, 2015

Submittal Number:

Amended Application No 1

Request (select all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Rezoning, Not Otherwise Listed | <input type="checkbox"/> Amendment of Proffered Conditions |
| <input type="checkbox"/> Rezoning, Conditional | <input checked="" type="checkbox"/> Amendment of Planned Unit Development Plan |
| <input type="checkbox"/> Rezoning to Planned Unit Development | <input type="checkbox"/> Amendment of Comprehensive Sign Overlay District |
| <input type="checkbox"/> Establishment of Comprehensive Sign Overlay District | |

Property Information:

Address: Pheasant Ridge Road Roanoke VA 24014

Official Tax No(s): 5460124, 5470301, 5470302, 5470303, 5470304, 5470305, 5470306, 5470307, 5470308

Existing Base Zoning:

(If multiple zones, please manually enter all districts.)

INPUD, Institutional Planned Unit Development

☒ With Conditions

☐ Without Conditions

Ordinance No(s). for Existing Conditions (If applicable).

40190

Requested Zoning:

INPUD, Institutional Planned Un

☒ With Conditions

☐ Without Conditions

Proposed

Land Use:

Group Care Facility, Congregate Home, Elde

Property Owner Information:

Name: PR Homes, LLC

Phone Number:

+1 (540) 774-7762

Address: 4423 Pheasant Ridge Road Suite 301 Roanoke VA 24014

E-Mail:

aholmes@smithpackett.com

Property Owner's Signature:

James R. Smith, Chairman Manager

Applicant Information (if different from owner):

Name: PRMC, LLC

Phone Number:

+1 (540) 774-7762

Address: 4423 Pheasant Ridge Road Suite 301 Roanoke VA 24014

E-Mail:

aholmes@smithpackett.com

Applicant's Signature:

James R. Smith, Chairman Manager

Authorized Agent Information (if applicable):

Name: James R. Smith

Phone Number:

+1 (540) 774-7762

Address: 4432 Pheasant Ridge Road Suite 301 Roanoke VA 24014

E-Mail:

aholmes@smithpackett.com

Authorized Agent's Signature:

James R. Smith Chairman Manager

Zoning Amendment

Application Checklist



The following must be submitted for all applications:

- ☐ Completed application form and checklist.
- ☐ Written narrative explaining the reason for the request.
- ☐ Metes and bounds description, if applicable.
- ☐ Filing fee.

For a **rezoning not otherwise listed**, the following must also be submitted:

- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures.

For a **conditional rezoning**, the following must also be submitted:

- ☐ Written proffers. See the City's Guide to Proffered Conditions.
- ☐ Concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures. Please label as 'development plan' if proffered.

For a **planned unit development**, the following must also be submitted:

- ☐ Development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.

For a **comprehensive sign overlay district**, the following must be submitted:

- ☐ Comprehensive signage plan meeting the requirements of Section 36.2-336(d)(2) of the City's Zoning Ordinance.

For an **amendment of proffered conditions**, the following must also be submitted:

- ☐ Amended development or concept plan meeting the Application Requirements of item '2(c)' in Zoning Amendment Procedures, if applicable.
- ☐ Written proffers to be amended. See the City's Guide to Proffered Conditions.
- ☐ Copy of previously adopted Ordinance.

For a **planned unit development amendment**, the following must also be submitted:

- ☐ Amended development plan meeting the requirements of Section 36.2-326 of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a **comprehensive sign overlay amendment**, the following must also be submitted:

- ☐ Amended comprehensive signage plan meeting the requirements of Section 36.2-336(d) of the City's Zoning Ordinance.
- ☐ Copy of previously adopted Ordinance.

For a proposal that requires a **traffic impact study** be submitted to the City, the following must also be submitted:

- ☐ A Traffic Impact Study in compliance with Appendix B-2(e) of the City's Zoning Ordinance.

For a proposal that requires a **traffic impact analysis** be submitted to VDOT, the following must also be submitted:

- ☐ Cover sheet.
- ☐ Traffic impact analysis.
- ☐ Concept plan.
- ☐ Proffered conditions, if applicable.
- ☐ Required fee.

*An electronic copy of this application and checklist can be found at www.roanokeva.gov/pbd by selecting 'Planning Commission' under 'Boards and Commissions'. A complete packet must be submitted each time an application is amended, unless otherwise specified by staff.

Signature Page to Zoning Amendment Application

Tax Map No.: 5461024

Property Address: 4414 Pheasant Ridge Road, SW

Tax Map No.: 5470301

Property Address: 0 Griffin Road, SW

Tax Map No.: 5470302,

Property Address: 4345 Griffin Road, SW,

Tax Map No.: 5470303,

Property Address: 0 Griffin Road, SW,

Tax Map No.: 5470304,

Property Address: 0 Griffin Road, SW,

Tax Map No.: 5470305,

Property Address: 0 Griffin Road, SW,

Tax Map No.: 5470306,

Property Address: 0 Van Winkle Road, SW,

Tax Map No.: 5470307


Property Address: 0 Van Winkle Road, SW

Tax Map No.: 5470308,

Property Address: 0 Van Winkle Road, SW,

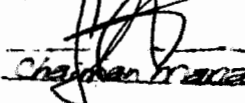
Signature of Owner

PR Homes, LLC *

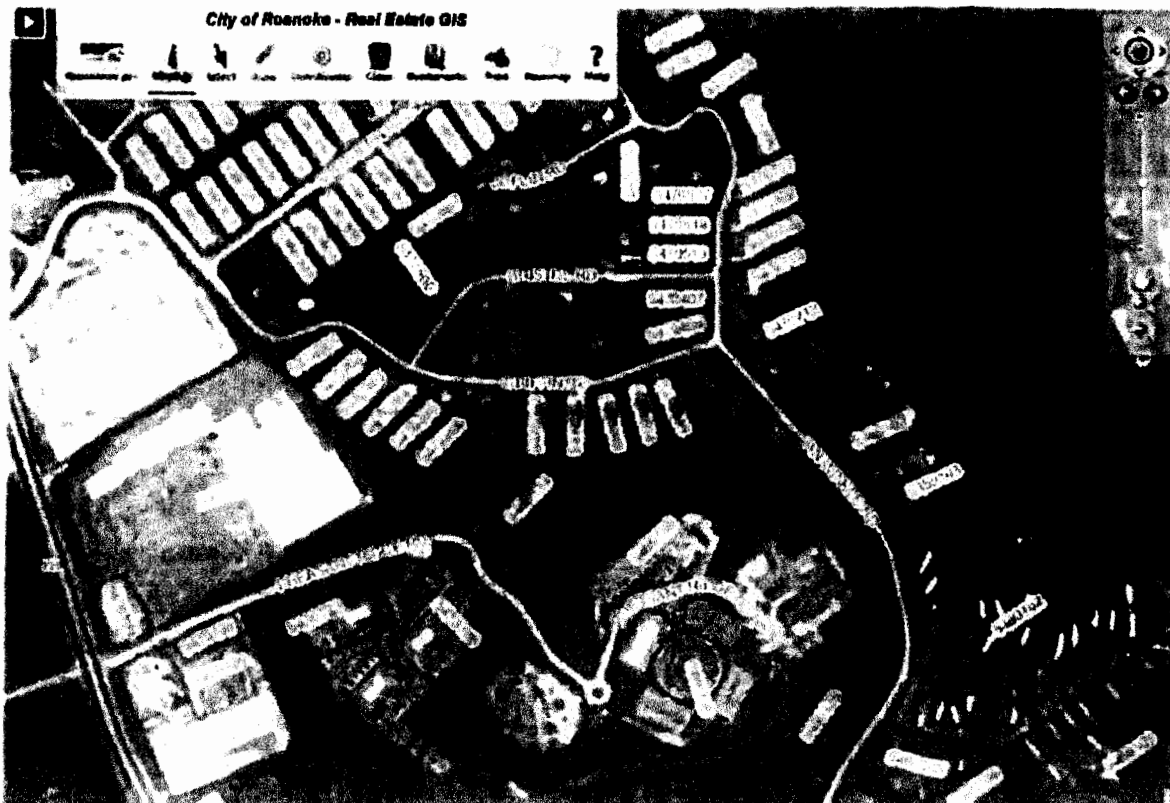
By:  James R. Smith
As: Chairman Manager

Signature of Applicant

PRMC, LLC

By:  James R. Smith
As: Chairman Manager

* PR Homes, LLC succeeded to the ownership of all real and/or any interest in real estate pursuant to merger with A&J Holdings, LLC, Dalton Place, LLC, Van Winkle, LLC, Integra Investment, LLC and Pheasant Ridge Holdings, LLC effective as of December 1, 2008. A copy of the certificate of the Virginia State Corporation Commission is attached hereto for reference.



Adjoining Property Owners

Owner	Property Address	Tax ID	Mailing Address
Paige Paul Andrew & Joy Faye	4323 Griffin Rd SW	5470206	4323 Griffin RD SW Roanoke, VA 24014
PR Homes LLC	0 Griffin RD SW	5470413	4423 Pheasant Ridge Rd Suite 301 Roanoke VA 24014
DNAL Holdings I LLC	4334 Griggin RD SW	5470412	4423 Pheasant Ridge Rd Suite 301 Roanoke VA 24014
DNAL Holdings I LLC	0 Griffin Rd SW	5470411	4423 Pheasant Ridge Rd Suite 301 Roanoke VA 24014
Claytor Henry J JR & Carolyn D	4350 Griffin RD SW	5470410	4350 Griffin Rd SW Roanoke VA 24014
Tris First Baptist Church	0 Griffin RD SW	5470409	310 N Jefferson St Roanoke, VA 24016
Webb Richard B JR	4372 Griffin RD SW	5470408	4372 Griffin RD SW Roanoke, VA 24000
Paige Paul Andrew & Joy Faye	4404 Van Winkle RD SW	5470712	4323 Griffin RD SW Roanoke, VA 24014
Muse Ruby Marie	4422 Van Winkle RD SW	5470713	4422 Van Winkle RD SW Roanoke, VA 24014
Edwards Gloria M	4437 Van Winkle RD SW	2470310	4437 Van Winkle RD SW Roanoke, VA 24014
Roanoke IL Investors, LLC	4428 Pheasant Ridge RD SE	5460165	4423 Pheasant Ridge RD SW Suite 301 Roanoke, VA 24014
Pheasant Ridge Office Buildings LLC	4423 Pheasant Ridge RD SW	5470130	4423 Pheasant Ridge RD SW Suite 301 Roanoke, VA 24014
Pheasant Ridge Office Buildings LLC	4419 Pheasant Ridge RD SW	5470129	4423 Pheasant Ridge RD SW Suite 301 Roanoke, VA 24014
Ventas Pheasant Ridge LLC	4435 Pheasant Ridge RD SW	5460130	21001 N Tatum BLVD STE 1630-630 Phoenix, AL 85050
Brixmor GA Apollo I Sub Holdings LLC	4210 Franklin RD SW	5470116	PO Box 4900 Dept 124 Scottsdale, AZ 85261
Rye Charles W	4384 Van Winkle RD SW	5470711	4324 Van Winkle RD SW Roanoke, VA 24014

**Amendment Rezoning Application No.1
Supporting Documents**

Tax No. 5460124, 5470301, 5470302, 5470303,
5470304, 5470305, 5470306, 5470307 and 5470308

City of Roanoke, Virginia

Project Name: Pheasant Ridge Memory Care

Project Location: Pheasant Ridge Road, Roanoke,
Virginia

Proposed Zoning: INPUD

Contents

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Relationship to the City's Comprehensive Plan and the Southern Hills Neighborhood Plan	6
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Legal Description

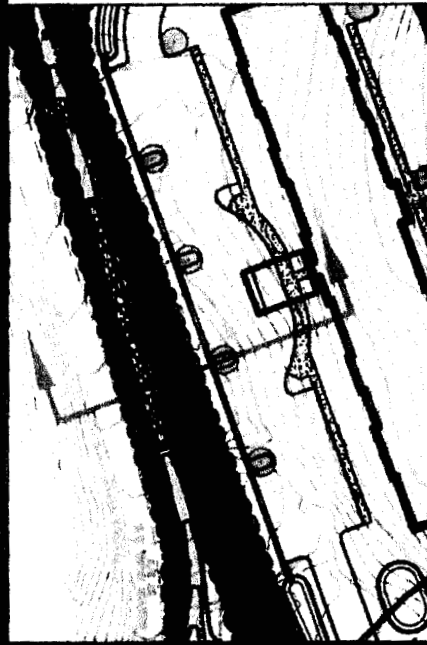
BEGINNING at an existing iron pin lying on the northerly right-of-way of the terminus of Pheasant Ridge Road, SW, a variable width public right-of-way, and Pheasant Ridge Road, SW, a 40-foot private right-of-way, common corner of the property of Brixmor GA Apollo I SUB Holdings, LLC (Instrument # 120009239) and the herein described tract; thence leaving the said northerly right-of-way of Pheasant Ridge Road, SW and with the common line of the aforesaid property of Brixmor GA Apollo I SUB Holdings, LLC the following two (2) courses; N 38° 34' 31" W for a distance of 79.17 feet to an existing iron pin; thence N 38° 28' 51" W for a distance of 81.27 feet to an existing iron pipe at the corner of the property of Paul Andrew Paige and Joy Faye Paige (Instrument # 0020005882); thence leaving the said property of Brixmor GA Apollo I SUB Holdings, LLC and with the line of the aforesaid property of Paul Andrew Paige and Joy Faye Paige the following four (4) courses; N 51° 32' 17" E for a distance of 207.12 feet to an existing iron pipe; thence N 49° 35' 04" E for a distance of 311.79 feet to a point; thence N 42° 58' 32" W for a distance of 6.89 feet to a point; thence with a curve to the right having a delta angle of 135° 00' 00", a radius of 14.50 feet, a chord bearing and distance of N 24° 31' 28" E, 26.79 feet to a point on the southerly right-of-way of Griffin Road, SW, a 50-foot public right-of-way; thence leaving the said property of Paul Andrew Paige and Joy Faye Paige and with the southerly right-of-way line of Griffin Road, SW the following four (4) courses; S 87° 58' 32" E, passing an existing iron pin at a distance of 154.37 feet, a total distance of 275.04 feet to a point; thence with a curve to the left having a delta angle of 19° 24' 50", a radius of 116.80 feet, a chord bearing and distance of N 82° 17' 53" E, 39.39 feet to a point; thence N 72° 35' 28" E, passing an existing iron pin at a distance of 141.04 feet and passing an existing iron pin at a distance of 230.95 feet, a total distance of 344.46 feet to a point; thence with a curve to the right having a delta angle of 68° 49' 43", a radius of 73.21' feet, a chord bearing and distance of S 72° 59' 40" E, 82.75 feet to a point at the southwesterly intersection of the said Griffin Road, SW and the westerly right-of-way of Van Winkle Road, SW, a 50-foot public right-of-way; thence leaving the southerly right-of-way of the said Griffin Road, SW and with the aforesaid westerly right-of-way of Van Winkle Road, SW, S 38° 34' 49" E for a distance of 220.07 feet to corner of Lot 10A, Block 11, Section 2, Southern Hills (Map Book 1, Page 3423), the property of Gloria M. Edwards (Instrument #140000594); thence leaving the said westerly right-of-way of Van Winkle Road and with the northwesterly line of the aforesaid property of Gloria M. Edwards, S 51° 15' 28" W for a distance of

199.80 feet to a point on the northeasterly line of the property of Roanoke IL Investors, LLC (Instrument # 120005370); thence leaving the said property of Gloria M. Edwards and with the line of the aforesaid property of Roanoke IL Investors, LLC the following four (4) courses; N 38° 31' 22" W for a distance of 50.45 feet to an existing iron pin; thence S 44° 05' 23" W for a distance of 199.10 feet to a point; thence S 63° 46' 17" W for a distance of 372.94 feet to a point; thence S 23° 35' 16" W for a distance of 354.15 feet to a point on the northerly right-of-way of the aforesaid Pheasant Ridge Road, SW (private 40' right-of-way); thence leaving the said property of Roanoke IL Investors, LLC and with the northerly right-of-way line of the aforesaid Pheasant Ridge Road, SW (private 40' right-of-way) the following seven (7) courses; N 27° 24' 40" W for a distance of 57.33 feet to a point; thence with a curve to the left having a delta angle of 24° 44' 04", a radius of 230.00 feet, a chord bearing and distance of N 39° 46' 42" W, 98.52 feet to a point; thence N 52° 08' 44" W for a distance of 68.27 feet to a point; thence with a curve to the right having a delta angle of 34° 29' 37", a radius of 105.00 feet, a chord bearing and distance of N 34° 53' 56" W, 62.26 feet to a point; thence N 17° 39' 07" W for a distance of 31.00 feet to a point; thence with a curve to the left having a delta angle of 91° 34' 57", a radius of 130.00 feet, a chord bearing and distance of N 63° 26' 35" W, 186.37 feet to a point; thence S 70° 45' 56" W for a distance of 8.37 feet to an existing iron pin, the POINT OF BEGINNING, containing 11.3763 acres.

NO.	DATE	DESCRIPTION	BY	CHKD.
1	10/1/01	PRELIMINARY	J. L. SMITH	J. L. SMITH
2	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
3	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
4	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
5	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
6	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
7	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
8	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
9	10/1/01	REVISED	J. L. SMITH	J. L. SMITH
10	10/1/01	REVISED	J. L. SMITH	J. L. SMITH

Stormwater Conveyance Channel

See Exhibit A-2 attached



SECTION LOCATION

NOTE:
THIS EXHIBIT IS FOR ILLUSTRATIVE PURPOSES ONLY.
THE FINAL LOCATION AND SPECIES OF PLANT MATERIALS
WILL BE ESTABLISHED WITH THE SITE DEVELOPMENT
PLANS, AND ARE SUBJECT TO THE REVIEW AND
APPROVAL OF ROANOKE CITY STAFF.

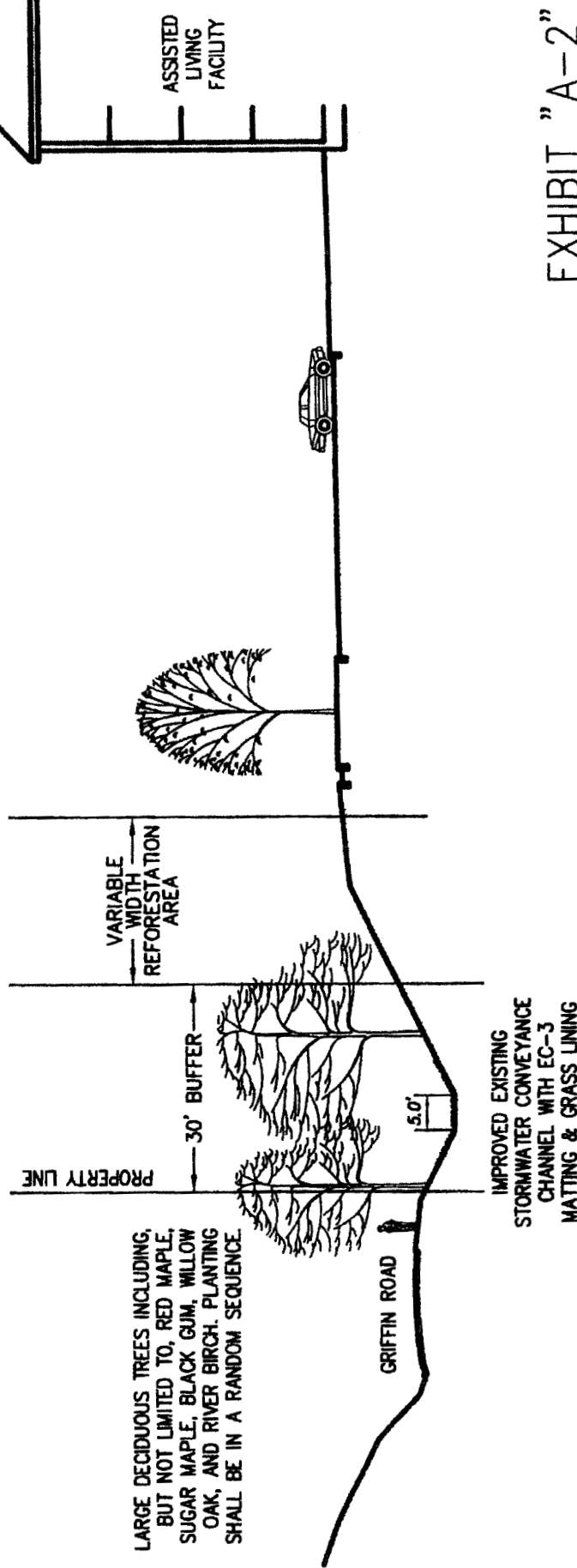


EXHIBIT "A-2"

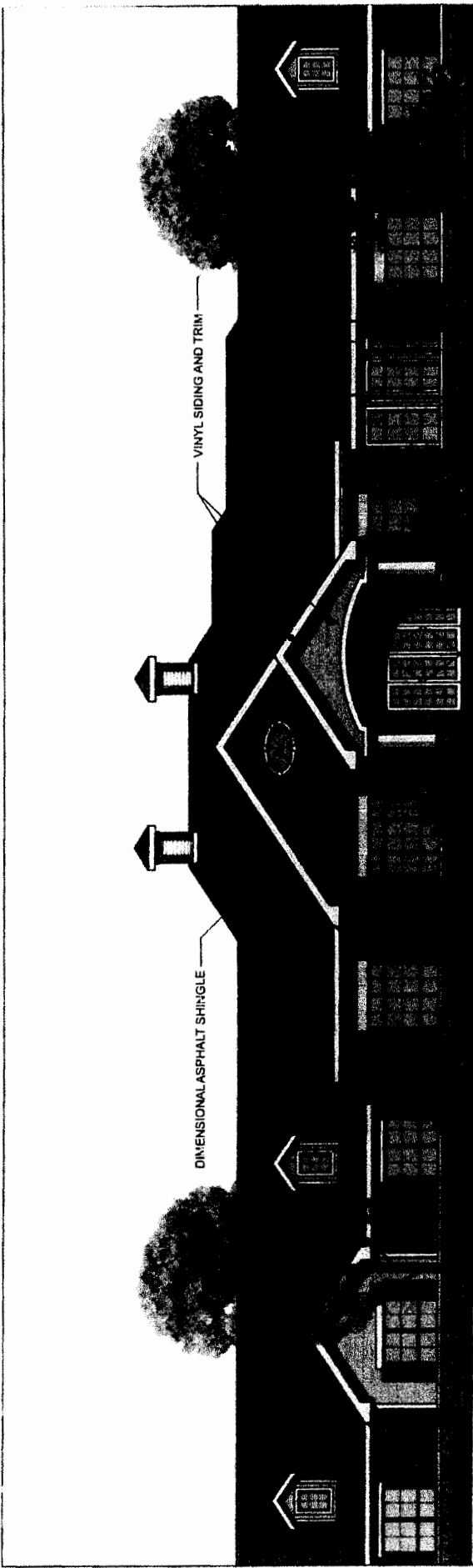
DATE:	September 4, 2015
SCALE:	NO SCALE
COMM. NO.:	14-247

4664 BRAMBLETON AVENUE
P.O. BOX 20669
ROANOKE, VIRGINIA 24018
PHONE: (540) 774-4411
FAX: (540) 772-9445
E-MAIL: MAIL@LUMSDENPC.COM

LUMSDEN ASSOCIATES, P.C.
ENGINEERS-SURVEYORS-PLANNERS
ROANOKE, VIRGINIA

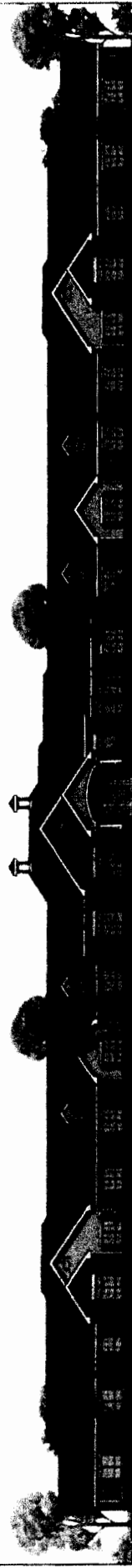
Elevations Memory Care

See Exhibit B-1 attached



ENTRY DETAIL
SCALE: 1/4" = 1'-0"

BRICK SPLIT FACE CMU OR
NATURAL MASONRY



FRONT ELEVATION (NW)
SCALE: 3/32" = 1'-0"

PHEASANT RIDGE MEMORY CARE
CONCEPTUAL ELEVATIONS

SMITH/PACKETT
ARCHITECTS

GAYLEN HOWARD LAING ARCHITECT

ARCHITECTURE INTERIOR DESIGN PLANNING

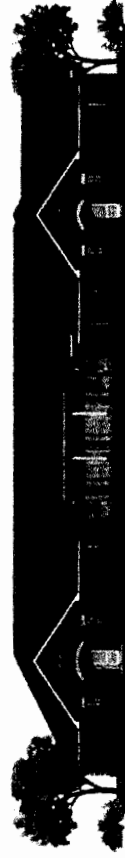
1111



SIDE ELEVATION (SW)
SCALE: 3/32" = 1'-0"



REAR ELEVATION (SE)



SIDE ELEVATION (NE)
SCALE: 3/32" = 1'-0"

GAYLEN HOWARD LAING ARCHITECT

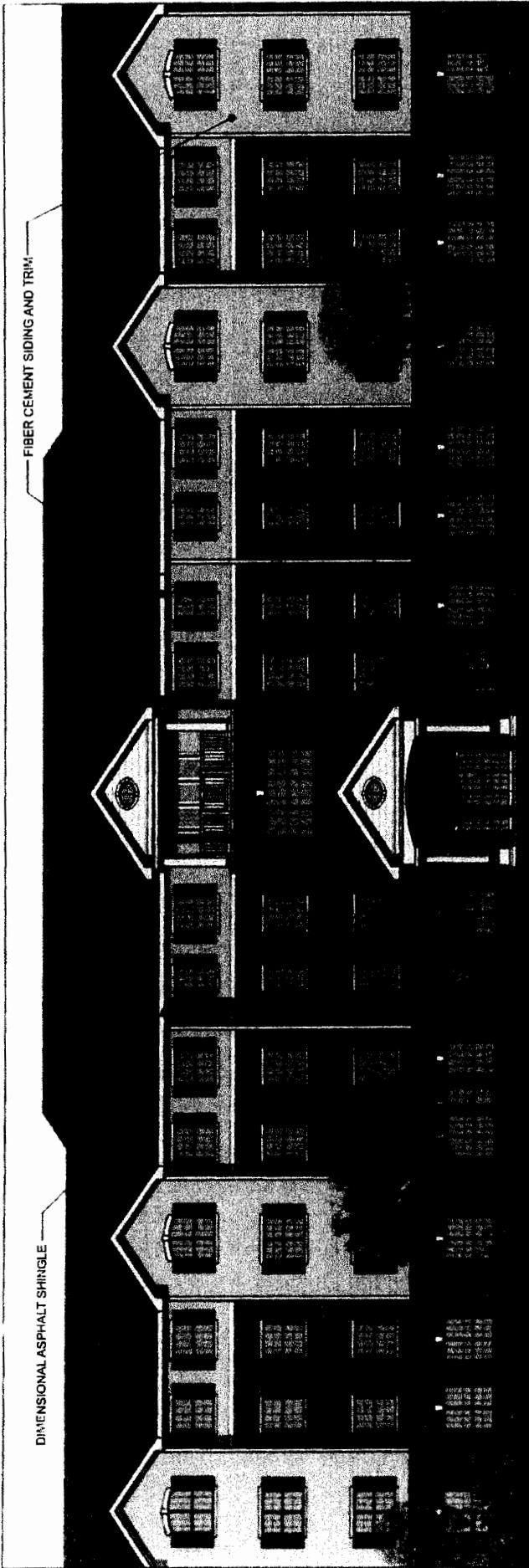
ARCHITECTURE INTERIORS ON PLANNING

PHEASANT RIDGE MEMORY CARE
CONCEPTUAL ELEVATIONS

SMITH/PACKETT
PLANNING & DESIGN

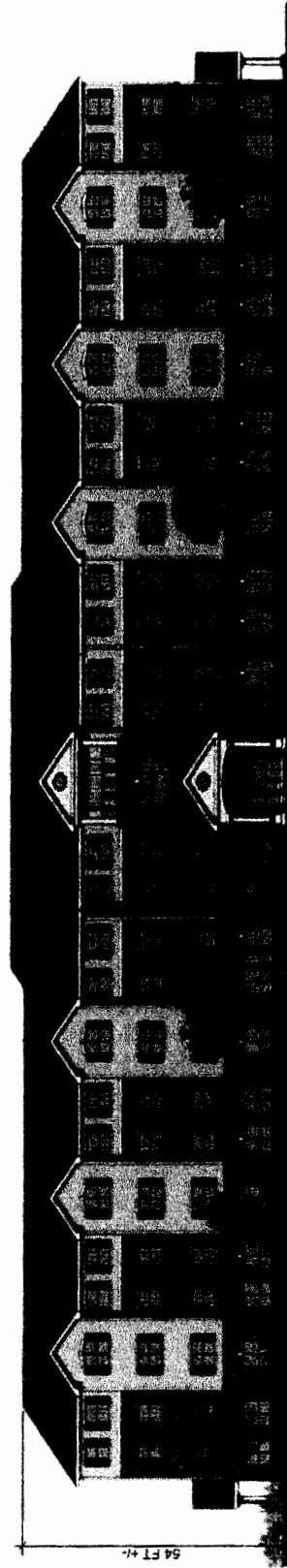
Elevations Assisted Living

See Exhibit B-2 attached



ENTRY DETAIL
SCALE: 3/16" = 1'-0"

BRICK OR SPLIT FACE CMU



FRONT ELEVATION (NW)
SCALE: 3/32" = 1'-0"

PHEASANT RIDGE ASSISTED LIVING
CONCEPTUAL ELEVATIONS

GAYLEN HOWARD LAING ARCHITECT

ARCHITECTURE INTERIOR DESIGN PLANNING

SMITH/PACKETT
ARCHITECTS

Previously Adopted Ordinance

See Exhibit C Attached

ZONING: Pursuant to Resolution No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Monday, March 16, 2015, at 7:00 p.m., or as soon thereafter as the matter may be heard, on a request of PR Homes, LLC, that property located at 4414 Pheasant Ridge Road, S. W., bearing Official Tax Map Nos. 5460124; 4345 Griffith Road, S. W., bearing Official Tax Map No. 5470302 for under addressed lots on Griffith Road, S. W., bearing Official Tax Map Nos. 5470301, 5470303, 5470304, 5470305, and three unaddressed lots on Van Winkle Road, S. W., bearing Official Tax Map Nos. 5470306, 5470307, 5470308, be rezoned from Mixed Use Planned Unit Development Plan (MXPUD), pursuant to Ordinance No. 39610-031813 adopted by Roanoke City Council on Monday, March 18, 2013, to Institutional Plan Unit Development Plan (INPUD), the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Tuesday, February 24, 2015 and Tuesday, March 3, 2015.

(See publisher's affidavit on file in the City Clerk's Office.)

The City Planning Commission submitted a written report recommending approval of the rezoning request, finding that the Amended Application No.2 is consistent with the City's Comprehensive Plan and Zoning Ordinance as it develops an undeveloped site, maximizes development potential of the site, and is sensitive to its relationship with the adjoining neighborhood.

(For full text, see report on file in the City Clerk's Office.)

Council Member Ferris offered the following ordinance:

(#40190-031615) AN ORDINANCE to rezone certain property located at 4414 Pheasant Ridge Road, S. W., 4345 Griffin Road, S. W., four unaddressed lots on Griffin Road, S. W., and three unaddressed lots on Van Winkle Road, S. W., from MXPUD, Mixed Use Planned Unit Development, to INPUD, Institutional Planned Unit Development, subject to certain conditions; and dispensing with the second reading of this ordinance by title.

(For full text of ordinance, see Ordinance Book No. 77, page 404.)

Council Member Ferris moved the adoption of Ordinance No. 40190-031615. The motion was seconded by Council Member Lea.

Due to a personal interest in the abovementioned public hearing, Council Member Rosen advised that he would refrain from participating in any discussions; and read the following statement for the record:

"STATEMENT OF CONFLICT OF INTEREST

"I, Court G. Rosen, state that I have a personal interest in agenda item B.3., regarding the request of PR Homes, LLC, to rezone certain properties because I have a business relationship with an affiliate of PR Homes, LLC.

Therefore, pursuant to Virginia Code Section 2.2-3112, I must refrain from participation in this matter. I ask that the City Clerk accept this statement and ask that it be made a part of the minutes of this meeting.

Witness my signature made this 16th day of March 2015.

S/Court G. Rosen
Court G. Rosen"

(See copy of Statement of Conflict of Interest on file in the City Clerk's Office.)

The Mayor inquired if there were persons present who wished to speak on the matter.

Aubry Holmes, 4423 Pheasant Ridge Road, appeared and spoke in support of the rezoning amendment.

Susan Echert, 5480 The Peaks Drive, Roanoke County, appeared and spoke in support of the rezoning amendment.

There being no additional speakers, Mayor Bowers declared the public hearing closed.

There being no questions and/or comments by the Council Members, Ordinance No. 40190-031615 was adopted by the following vote:

AYES: Council Members Lea, Price, Trinkle, Bestpitch, Ferris, and Mayor Bowers-6.

NAYS: None-0.

(Council Member Rosen abstained from voting.)

**OPERATING AGREEMENT
OF
PR HOMES LLC**

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THIS OPERATING AGREEMENT, dated as of May 30, 2006, by and among the undersigned parties, who by their execution of this Operating Agreement adopt this Agreement as the operating agreement of PR Homes LLC, a Virginia limited liability company (the "Company"), provides as follows:

RECITALS:

The Company has been organized as a limited liability company under the laws of the Commonwealth of Virginia effective as of May 30, 2006, and the undersigned parties wish to enter into this Operating Agreement in order to set forth the terms and conditions on which the management, business and financial affairs of the Company shall be conducted.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, covenants and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

ARTICLE I
DEFINITIONS

1.01 The following terms used in this Operating Agreement shall have the following meanings (unless otherwise expressly provided herein):

(a) "Act" shall mean the Virginia Limited Liability Company Act, Va. Code § 13.1-1 000 et seq., as amended and in force from time to time.

(b) "Articles" shall mean the articles of organization of the Company, as amended and in force from time to time.

(c) "Capital Account" shall mean as of any given date the amount calculated and maintained by the Company for each Member as provided in Section 6.04 hereof.

(d) "Capital Contribution" shall mean any contribution to the capital of the Company by a Member in cash, property or services, or a binding obligation to contribute cash, property or services, whenever made. "Initial Capital Contribution" shall mean the initial contribution to the capital of the Company by a Member, as determined pursuant to Section 6.01 hereof.

(e) "Code" shall mean the Internal Revenue Code of 1986 or corresponding provisions of subsequent superseding federal revenue laws.

(f) "Company" shall refer to PR Homes LLC.

(g) "Entity" shall mean any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or other association.

(h) "Manager" shall mean a manager of the Company, whose rights, powers and duties are specified in Article V hereof.

(i) "Member" shall mean each Person that is identified as an initial Member in Article III hereof or is admitted as a Member (either as a transferee of a Membership Interest or as an additional Member) as provided in Article VIII hereof. A Person shall cease to be a Member at such time as he no longer owns any Membership Interest.

(j) "Membership Interest"

(i) Except as otherwise provided herein, shall mean the ownership interest of a Member in the Company, which may be expressed as a percentage equal to (a) such Member's Capital Account divided by (b) the aggregate Capital Accounts of all Members. The Membership Interests may be recorded from time to time on a schedule attached to this Operating Agreement.

(ii) For purposes of voting by the Members, the term Membership Interest shall mean the interest of a Member in the Company, which may be expressed as a percentage equal to (a) the sum such Member's Capital Account plus loans made to the Company by such Member divided by (b) the sum of the aggregate Capital Accounts of all Members plus loans made to the Company by all Members.

(iii) For purposes of allocating incomes, gains, losses, deductions, and credits to a Member, the term Membership Interest shall mean the interest of a Member in the Company, which may be expressed as a percentage equal to (a) the sum of such Member's Capital Account plus loans made to the Company by such Member divided by (b) the sum of the aggregate Capital Accounts of all Members plus loans made to the Company by all Members.

(k) "Operating Agreement" shall mean this Operating Agreement, as originally executed and as amended from time to time.

(l) "Person" shall mean any natural person or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so admits.

ARTICLE II

PURPOSE AND POWERS OF COMPANY

2.01 Purpose. The purposes of the Company shall be to:

(a) Own, acquire, manage, develop, operate, buy, sell, exchange, finance, refinance, and otherwise deal with real estate, personal property, and any type of business, as the Managers may from time to time deem to be in the best interests of the Company;

(b) Acquire, own, buy, sell, invest in, trade, manage, finance, refinance, exchange, or otherwise dispose of stocks, securities, partnership interests, CDS, mutual funds, commodities, and any and all investments whatsoever, that the Managers may from time to time deem to be in the best interests of the Company; and

(c) Engage in any other business and activities, and have all powers not prohibited by law, as the Members may deem to be in the best interests of the Company.

2.02 Powers. The Company shall have all powers and rights of a limited liability company organized under the Act, to the extent such powers and rights are not prescribed by the Articles.

ARTICLE III
NAMES AND ADDRESSES OF MEMBERS; PRINCIPAL OFFICE

3.01 Names and Addresses. Until the Company is otherwise notified by a Member, the names and addresses of the Members are as follows:

James R. Smith
4415 Pheasant Ridge Road, Suite 302
Roanoke, Virginia 24014

BRAMBLETON AVENUE ASSOCIATES, INC.
4415 Pheasant Ridge Road, Suite 302
Roanoke, Virginia 24014

3.02 Principal Office. The principal office of the Company shall initially be at 4415 Pheasant Ridge Road, Suite 302, Roanoke, Virginia 24014. The principal office may be changed from time to time by the Managers.

ARTICLE IV
VOTING POWERS, MEETINGS, ETC. OF MEMBERS

4.01 In General. The Members shall not be entitled to participate in the day-to-day affairs and management of the Company, but instead, the Members' right to vote or otherwise participate with respect to matters relating to the Company shall be limited to those matters as to which the express terms of the Act, the Articles or this Operating Agreement vest in the Members the right to so vote or otherwise participate.

4.02 Actions Requiring Approval of Members.

(a) Notwithstanding any other provision of this Operating Agreement, the affirmative vote of the Members holding a majority of the Membership Interest shall be required in order for any of the following actions to be taken on behalf of the Company:

(i) Amending the Articles or this Operating Agreement in any manner that materially alters the preferences, privileges or relative rights of the Members.

(ii) Electing the Managers as provided in Article V hereof.

(iii) Taking any action which would make it impossible to carry on the ordinary business of the Company.

(iv) Filing or consenting to filing a petition for or against the Company under any federal or state bankruptcy, insolvency or reorganization act.

(v) Loaning Company funds to any Member.

- (vi) Setting any compensation or other remuneration for any Manager.
- (vii) Making any distribution of the assets of the Company to any Member.
- (viii) The indemnification of a Member pursuant to Section 4.12 hereof.
- (ix) The indemnification of a Manager pursuant to Section 5.08 hereof.

(b) Unless the express terms of this Operating Agreement specifically provide otherwise, the affirmative vote of the Members holding a majority of the Membership Interests shall be necessary and sufficient in order to approve or consent to any of the matters set forth in Section 4.02(a) above or any other matters which require the approval or consent of the Members.

4.03 Action by Members. In exercising their rights as provided above, the Members shall act collectively through meetings and/or written consents as provided in this Article. Actions by the Members at meetings of the Members shall be recorded in written minutes and signed by all Members in attendance.

4.04 Annual Meeting. The annual meeting of the Members shall be held on the first Wednesday in July of each year at 10:00 a.m. or at such other time as shall be determined by the Managers for the purpose of the transaction of such business as may come properly before the meeting.

4.05 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Managers, and shall be called by the Managers at the request of any two Members, or such lesser number of Members as are Members of the Company.

4.06 Place of Meeting. The place of any meeting of the Members shall be the principal office of the Company, unless another place, either within or outside the Commonwealth of Virginia, is designated by the Managers.

4.07 Notice of Meetings. Written notice stating the place, day and hour of any meeting of the Members and, if a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 60 days before the date of the meeting, either personally or by mail, by or at the direction of the Managers, to each Member, unless the Act or the Articles require different notice.

4.08 Conduct of Meetings. All meetings of the Members shall be presided over by a chairperson of the meeting, who shall be a Manager, or a Member designated by the Managers. The chairperson of any meeting of the Members shall determine the order of business and the procedure at the meeting, including regulation of the manner of voting and the conduct of discussion, and shall appoint a secretary of such meeting to take minutes thereof.

4.09 Participation by Telephone or Similar Communications. Members may participate and hold a meeting by means of conference telephone or similar communications equipment by means of which all Members participating can hear and be heard, and such participation shall constitute attendance and presence in person at such meeting.

4.10 Waiver of Notice. When any notice of a meeting of the Members is required to be given, a waiver thereof in writing signed by a Member entitled to such notice, whether given before, at, or after the time of the meeting as stated in such notice, shall be equivalent to the proper giving of such notice.

4.11 Action by Written Consent. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if one or more written consents to such action are signed by the Members who are entitled to vote on the matter set forth in the consents and who constitute the requisite number or percentage of such Members necessary for adoption or approval of such matter on behalf of the Company. By way of example and not limitation, the Members holding a majority of the Membership Interests may take action as to any matter specified in Section 4.02 hereof by signing one or more written consents approving such action, without obtaining signed written consents from any other Members. Such consent or consents shall be filed with the minutes of the meetings of the Members. Action taken under this Section shall be effective when the requisite Members have signed the consent or consents, unless the consent or consents specify a different effective date.

4.12 Indemnification of Members. Provided the Member has acted in good faith and in the best interest of the Company, the Company shall indemnify each Member, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Members may be entitled. The Managers shall, upon the approval affirmative vote of the Members holding a majority of the Membership Interest, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.

ARTICLE V **MANAGERS**

5.01 Powers of Manager. Except as expressly provided otherwise in the Act, the Articles or this Operating Agreement, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed by a Chairman Manager, who shall be the chief executive Manager of the Company, a Vice-Chairman Manager, who shall be the chief operating Manager of the Company, and by such other Managers as determined by the Chairman Manager. The Chairman Manager shall determine the duties of each other Manager. Any manager may act alone. The powers so exercised shall be subject to the limitations of Section 4.02 and include but not be limited to the following:

(a) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate or advisable in furtherance of the purposes of the Company.

(b) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

- (c) Collecting funds due to the Company.
- (d) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company including selling all or substantially all of the assets of the Company.
- (e) The delivery of any instrument transferring or affecting the Company's interest in real estate.
- (f) The delivery of any instrument transferring or affecting the Company's interest in personal property.
- (g) To the extent that funds of the Company are available therefore, paying debts and obligations of the Company.
- (h) Borrowing money or otherwise committing the credit of the Company for Company activities, and voluntarily prepaying or extending any such borrowings.
- (i) Employing from time to time persons, firms or corporations for the operation and management of various aspects of the Company's business, including, without limitation, managing agents, contractors, subcontractors, architects, engineers, laborers, suppliers, accountants and attorneys on such terms and for such compensation as the Managers shall determine.
- (j) Making elections available to the Company under the Code.
- (k) Obtaining general liability, property and other insurance for the Company, as the Managers deem proper.
- (l) Taking such actions as may be directed by the Members in furtherance of their approval of any matter set forth in Section 4.02 hereof.
- (m) Doing and performing all such things and executing, acknowledging and delivering any and all such instruments as may be in furtherance of the Company's purposes and necessary and appropriate to the conduct of its business.

5.03 Election, Etc. of Managers.

(a) The Members hereby unanimously elect James R. Smith as the Chairman Manager of the Company and Hunter D. Smith as the Vice Chairman Manager of the Company, to serve until the first annual meeting of the Members and until their respective successors shall be duly elected and qualified.

(b) The Members shall elect one or more Persons as Managers at each annual meeting of the Company to serve until the next annual meeting of the Company and until their respective successors are duly elected and qualified. In addition, if any Person resigns or otherwise vacates the office of Manager, the Members shall elect a replacement Manager to serve the remaining term of such office, unless one or more other Persons are then serving as Managers and the Members determine not to fill such vacancy. A Person may be removed as a Manager by the Members with or without cause at any time. A Manager may, but shall not be

required to, be elected from among the Members. A Manager may be a natural person or an Entity. Notwithstanding any of the foregoing provisions, the rights of the Members to elect and remove Managers shall be subject to the restrictions set forth in Section 5.03 hereof.

(c) Unless otherwise expressly provided by the Act, the Articles, or the terms of this Operating Agreement, the approval or consent of the Chairman Manager shall be necessary and sufficient for the Managers to take any action on behalf of the Company that the Managers are authorized to take pursuant to the Act, the Articles or this Operating Agreement.

5.04 Execution of Documents and Other Actions. The Managers may delegate to one or more of their number the authority to execute any documents or take any other actions deemed necessary or desirable in furtherance of any action that they have authorized on behalf of the Company as provided in Section 5.03 hereof.

5.05 Single Manager. If at any time there is only one Person serving as a Manager, such Manager shall be entitled to exercise all powers of the Managers set forth in this Section, and all references in this Section and otherwise in this Operating Agreement to "Managers" shall be deemed to refer to such single Manager.

5.06 Reliance by Other Persons. Any manager may act alone. Any Person dealing with the Company, other than a Member, may rely on the authority of a particular Manager or Managers in taking any action in the name of the Company, if such Manager or Managers provide to such Person a copy of the applicable provision of this Operating Agreement or the resolution or written consent of the Managers or Members granting such authority, certified in writing by such Manager or Managers to be genuine and correct and not to have been revoked, superseded or otherwise amended.

5.07 Manager's Expenses and Fees. A Manager shall be entitled, but not required, to receive a reasonable salary for services rendered on behalf of the Company or in his capacity as a Manager. The amount of such salary shall be determined by the Members. The Company shall reimburse any Manager for reasonable out-of-pocket expenses which were or are incurred by the Manager on behalf of the Company with respect to the start-up or operation of the Company, the on-going conduct of the Company's business, or the dissolution and winding up of the Company and its business.

5.08 Indemnification of Managers. Provided the Manager has acted in good faith and in the best interest of the Company, the Company shall indemnify each Manager, whether serving the Company or, at its request, any other Entity, to the full extent permitted by the Act. The foregoing rights of indemnification shall not be exclusive of any other rights to which the Managers may be entitled. The Managers shall, upon the affirmative vote of the Members holding a majority of the Membership Interest, take such action as is necessary to carry out these indemnification provisions and may adopt, approve and amend from time to time such resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law.

ARTICLE VI
CONTRIBUTIONS TO THE COMPANY AND DISTRIBUTIONS

6.01 Initial Capital Contributions. The Initial Capital Contribution to be made by any Person who hereafter is admitted as a Member and acquires his Membership Interest from the Company shall be determined by the Members.

6.02 Additional Capital Contributions. The Members shall not be required to make additional Capital Contributions to the Company.

6.03 Interests and Return of Capital Contribution. No Member shall receive any interest on his Capital Contribution. Except as otherwise specifically provided for herein, the Members shall not be allowed to withdraw or have refunded any Capital Contribution.

6.04 Capital Accounts. Separate Capital Accounts shall be maintained for each Member in accordance with the following provisions:

(a) To each Member's Capital Account there shall be credited the fair market value of such Member's Initial Capital Contribution and any additional Capital Contributions, such Member's distributive share of profits, and the amount of any Company liabilities that are assumed by such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the fair market value of any Property distributed to such Member pursuant to any provision of this Operating Agreement such Member's distributive share of losses, and the amount of any liabilities of such Member that are assumed by the Company or that are secured by any property contributed by such Member to the Company.

(c) In the event any interest in the Company is transferred in accordance with the terms of this Operating Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred interest.

(d) The Capital Account shall also include a pro rata share of the fair market value of any property contributed by a person who is not a Member, such value to be the same value reported for federal gift tax purposes if a gift tax return is filed, and if not, the value in the case of real property shall be determined by an independent M.A.I. appraiser actively engaged in appraisal work in the area where such property is located and selected by the Managers, and otherwise by the certified public accountant or accountants then serving the Company.

(e) If any Member makes a non-pro rata Capital Contribution to the Company or the Company makes a non-pro rata distribution to any Member, the Capital Account of each Member shall be adjusted to reflect the then fair market value of the assets held by the Company immediately before the Capital Contribution or distribution.

6.05 Loans to the Company. If the Company has insufficient funds to meet its obligations as they come due and to carry out its routine, day-to-day affairs, then, in lieu of obtaining required funds from third parties or selling its assets to provide required funds, the Company may, but shall not be required to, borrow necessary funds from one or more of the Members as designated by the Managers.

6.06 Effect of Sale or Exchange. In the event of a permitted sale or other transfer of all or a portion of a Membership Interest in the Company, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent they relate to the transferred Membership Interest.

6.07 Distributions. All distributions of cash or other property (except upon the Company's dissolution, which shall be governed by the applicable provisions of the Act and Article IX hereof) shall be made to the Members in proportion to their respective Membership Interests. All distributions of cash or property shall be made at such time and in such amounts as determined by the affirmative vote of the Members holding a majority of the Membership Interest. All amounts withheld pursuant to the Code or any provisions of state or local tax law with respect to any payment or distribution to the Members from the Company shall be treated as amounts distributed to the relevant Member or Members pursuant to this Section.

6.08 Allocations of Income, Etc. Except as otherwise provided in Section 6.09 hereof, all items of incomes, gains, losses, deductions and credits, whether resulting from the Company's operations or in connection with its dissolution, shall be allocated to the Members for federal, state and local income tax purposes in proportion to their respective Membership Interests.

6.09 Allocation with Respect to Property. If, at any time during the Company's existence, any Member contributes to the Company property with an adjusted basis to the contributing Member which is more or less than the agreed fair market value and such property is accepted by the Company at the time of its contribution, the taxable income, gain, loss, deductions and credits with respect to such contributed property for tax purposes only (but not for purposes of calculating the Members' respective Capital Accounts) shall be shared among the Members so as to take account of the variation between the basis of the property to the Company and its agreed fair market value at the time of contribution, pursuant to Section 704(c) of the Code.

ARTICLE VII

RECORDS, REPORTS, ETC.

7.01 Records. The Company shall maintain and make available to the Members its records to the extent provided in the Act.

7.02 Financial and Operating Statements and Tax Returns. Within seventy-five (75) days from the close of each fiscal year of the Company, the Managers shall cause to be delivered to each Member a statement setting forth such Member's allocable share of all tax items of the Company for such year, and all such other information as may be required to enable each Member to prepare his federal, state and local income tax returns in accordance with all then applicable laws, rules and regulations. The Managers also shall cause to be prepared and filed all federal, state and local tax returns required of the Company for each fiscal year.

7.03 Banking. The funds of the Company shall be kept in one or more separate bank accounts in the name of the Company in such banks or other federally insured depositories as may be designated by the Managers, or shall otherwise be invested in the name of the Company in such manner and upon such terms and conditions as may be designated by the Managers. All withdrawals from any such bank accounts or investments established by the Managers hereunder shall be made on such signature or signatures as may be authorized from time to time by the

Managers. Any account opened by the Managers for the Company shall not be commingled with other funds of the Managers or interested persons.

7.04 Power of Attorney.

(a) Each Member does hereby irrevocably constitute and appoint the Managers serving in office from time to time, and each of them, as such Members true and lawful attorney, in his name, place and stead, to make, execute, consent to, swear to, acknowledge, record and file from time to time any and all of the following:

(i) Any certificate or other instrument which may be required to be filed by the Company or the Members under the laws of the Commonwealth of Virginia or under the applicable laws of any other jurisdiction in order to conduct business in any such jurisdiction, to the extent the Managers deem any such filing to be necessary or desirable.

(ii) Any amendment to the Articles adopted as provided in this Operating Agreement.

(iii) Any certificates or other instruments which may be required to effectuate the dissolution and termination of the Company pursuant to the provisions of this Operating Agreement.

(b) It is expressly understood, intended and agreed by each Member for himself, his successors and assigns that the grant of the power of attorney to the Managers pursuant to subsection (a) is coupled with an interest, is irrevocable, and shall survive the death or legal incompetency of the Member or such assignment of his Membership Interest.

(c) One of the ways that the aforementioned power of attorney may be exercised is by listing the names of the Members and having the signature of the Manager or Managers, as attorney-in-fact appear with the notation that the signatory is signing as attorney-in-fact of the listed Members.

ARTICLE VIII **ASSIGNMENT; RESIGNATION**

8.01 Assignment Generally. Except as provided in Sections 8.02, 8.03, and 8.04 of this Operating Agreement, each Member hereby covenants and agrees that he will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his interest in the Company to any person, firm, corporation, trust or other entity without first offering in writing to sell such Membership Interest to the Company. The Company shall have the right to accept the offer at any time during the thirty (30) days following the date on which the written offer is delivered to the Company. Said written notice shall set forth in detail all of the terms and conditions of the offer. The affirmative vote of the non-assigning Members holding a majority of the Membership Interest not being assigned shall be required to authorize the exercise of such option by the Company. If the Company shall fail to accept the offer within the thirty (30) day period, such Membership Interest may during the following 60 days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price for such interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase that would have been applicable to the Company had the Company purchased the interest; provided further

that the purchaser shall first become a Member pursuant to this Operating Agreement; and provided further that any interest not so disposed of within the 60-day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentence, no assignee of a Membership Interest shall become a Member of the Company except upon the consent of a majority in interest of the non-assigning Members.

8.02 Gift to Family Member. Notwithstanding Section 8.01, a Member shall not be required to offer to sell his Membership Interest to the Company prior to transferring his Membership Interest to his spouse or any of his descendants, or to a trust the sole beneficiaries of which are one or more of his spouse and his descendants, provided that such transfer is by way of inter vivos gift or testamentary or intestate succession. Notwithstanding the preceding sentence, no assignee of a Membership Interest shall become a Member of the Company except upon the affirmative vote of the non-assigning Members holding a majority of the Membership Interest not being assigned.

8.03 Transfers from Custodianships. Notwithstanding Section 8.01, any Membership Interest which is held by a custodian for a minor under the laws of the Commonwealth of Virginia or any other state shall be fully transferable and assignable to the minor, without an offer being made to the Company, when the minor reaches the age of termination of such custodianship under the applicable statute.

8.04 Purchase of Certain Membership Interests.

(a) Notwithstanding Section 8.01, if an Option Event (as defined below) occurs with respect to any Member (an "Option Member"), the Company shall have the option to purchase the Option Member's Membership Interest upon the terms and conditions set forth in this Section 8.04. For purposes of the foregoing, an "Option Event" shall mean the (i) the occurrence of any of the following events: death, total disability, permitted resignation, dissolution of a Member, or the occurrence of any other event that terminates the continued Membership of such Member in the Company, and (ii) the inability of a Member to pay his debts generally as they become due, or any assignment by a Member for the benefit of his creditors, or the filing by a Member of a voluntary petition in bankruptcy or similar insolvency proceedings, or the filing against a Member of an involuntary petition in bankruptcy or similar insolvency proceeding that is not dismissed within ninety (90) days thereafter. The term "Option Member" shall include an Option Member's personal representative or trustee in bankruptcy, to the extent applicable.

(b) Upon any Option Event occurring to an Option Member, the Option Member shall deliver written notice of the occurrence of such Option Event to the Company. The Company shall have the option, but not the obligation, to purchase the Option Member's Membership Interest at any time during the ninety (90) day period immediately following the date on which it receives notice of the occurrence of the Option Event. Such option shall entitle the Company to purchase such Membership Interest for the fair market value of such Membership Interest. The fair market value of the interest shall be the amount that the Option Member would receive in exchange for his entire interest in the Company if the Company sold all of its assets, subject to their liabilities, at their fair market value as of the date on which the Option Event occurred and distributed the net proceeds from such sale in complete liquidation of the Company. The affirmative vote of the non-Option Members holding a majority of the non-Option Membership Interest shall be required to authorize the exercise of such option by the

Company. Such option must be exercised by delivery of a written notice from the Company to the Option Member during the aforementioned period. Upon delivery of such notice the exercise of such option shall be final and binding on the Company and the Option Member.

(c) If the foregoing option is not exercised, the business of the Company shall continue, and the Option Member shall retain his Membership Interest.

(d) The fair market value of the Option Member's Membership Interest shall be determined as expeditiously as possible by a disinterested appraiser mutually selected by the Option Member and the Company (the Company's selection being made by the non-Option Members). If the Option Member and the Company are unable to agree on a disinterested appraiser, then the Option Member and the Company shall each select a disinterested appraiser and if the disinterested appraisers selected are not able to agree as to the fair market value of the interest, then the two disinterested appraisers shall select a third disinterested appraiser who shall determine the fair market value. The determination of the fair market value of the Option Member's Membership Interest by the appraiser or appraisers shall be conclusive and binding on all parties. All costs of an appraiser mutually selected by the Option Member and the Company or the two disinterested appraisers shall be shared equally by the Option Member and the Company. All costs of an individually selected appraiser shall be borne by the parties selecting such appraiser.

(e) If the option to purchase the Option Member's Membership Interest is exercised by the Company, then not later than thirty (30) days after the date on which the appraisal described above is complete (the "Appraisal Date"), the Company shall make a distribution of property (which may be cash or other assets of the Company) to the Option Member with a value equal in amount to the fair market value of the Option Member's Membership Interest; provided, however, that at the election of the Company such distribution to the Option Member may be made in five (5) equal annual installments, the first of which shall be made on the thirtieth (30th) day after the Appraisal Date and one of which shall be made on the same date in each of the four years thereafter, provided, further, however, that notwithstanding an election by the Company to make the distribution to the Option Member in five equal annual installments, the Company may accelerate without penalty all of such installments at any time or any part of such installment at any time. If the Company elects to make distributions to the Option Member in five equal annual installments as provided herein, the Company, in addition to such annual installments, shall pay the Option Member additional amounts computed as if the Option Member were entitled to interest on the undistributed amount of the total distribution to which the Option Member is entitled hereunder at an annual rate equal to the annual Federal Mid-Term Rate in effect under Section 1274(d) of the Code, as determined on the 30th day after the Appraisal Date, which additional amounts, computed like interest, shall be due and payable on the same dates as the annual installments of the distribution payable to the Option Member hereunder. Any unpaid capital contributions of the Option Member and any damages occurring to the Company as a result of the Option Event shall be taken into account in determining the net amount due the Option Member at the dosing, and any excess of such unpaid capital contributions or damages over the amount due at closing shall be netted against subsequent installment payments as they become due.

(f) If at a time when the Company has an option to purchase an Option Member's Membership Interest, it is prohibited from purchasing all or any portion of such Membership Interest pursuant to the Act or any loan agreement or similar restrictive agreement.

the Option Member and the remaining Members shall, to the extent permitted by law, take appropriate action to adjust the value of the Company's assets from book value to a fair valuation based on accounting practices and principles that are reasonable under the circumstances in order to permit the Company to purchase such Membership Interest. If the Company becomes obligated to purchase an Option Member's Membership Interest under this Section and the above action cannot be taken or does not create sufficient value to permit the Company to do so, the Company shall be obligated to purchase the portion of the Membership Interest it is permitted to purchase.

(g) In order to fund any obligations under this Operating Agreement, the Company or the Members may maintain such life insurance policies on the lives of one or more Members as the Members determine from time to time to be desirable.

(i) The Members may (but are not required to) purchase and maintain policies of disability and life insurance on the lives of each of the other Members to provide for their obligations under this Agreement. No Member shall possess any incident of ownership in any such policy insuring his life. The policies will be the sole property of the owner. No Member nor any successor, transferee, assignee, or personal representative of any Member shall have any collateral interest in any policy insuring his life.

(ii) If all the Membership Interest of any living Member are transferred pursuant to this Agreement, and if all the obligations of the purchasing Member or Members for payment of the purchase price have been fully satisfied, the said living Member may cause to be purchased from the owner any policy of insurance owned by the Company or any other Member insuring his life, said policy for a price equal to the interpolated terminal reserve of such policy plus any prepaid premiums, less any policy indebtedness.

(iii) Upon the death of a Member, the Company shall purchase and the estate of the deceased shall sell any policy of life insurance owned by such deceased Member insuring the life of any other Member, for a price equal to the net cash surrender value of such policy plus any prepaid premiums, less any policy indebtedness.

(iv) If a living Member sells his Membership Interest pursuant to this Agreement and if such Member dies before receiving the entire purchase price, then the purchasing party or parties shall pay to the estate of said Member an amount equal to the lesser of (1) the amount of the life insurance proceeds received by the purchasing party or parties on account of the death of said Member, (2) the remaining principal amount owned by the purchasing party or parties to the Member as a result of the purchase of the Membership Interest. Such payment from life insurance proceeds shall be credited as a principal prepayment of any note given by the purchasing party or parties. To the extent of any remaining principal balance, such note shall continue in effect according to its terms.

(h) For purposes of this Agreement and notwithstanding anything herein to the contrary, if a Member becomes totally disabled, the following provisions shall apply to the disposition of his Membership Interest in the Company:

(i) Definition: The term "total disability" or "total disabled" means the inability of a Member to perform substantially all of the regular duties of his position with the Company due to sickness or injury. In addition, a Member shall be conclusively deemed to be

totally disabled is he is determined eligible to receive disability benefits from (1) any policy of disability insurance issued by a commercial insurer, (2) a waiver of premium of benefit forming a part of any policy of life insurance, or (3) Social Security. If there is a dispute regarding the existence or continuation of a total disability, the Company may require the Member to submit to an examination by a medical doctor licenses to practice medicine in the Commonwealth of Virginia at such reasonable times as it may require but not more frequently than once in any 90 day period. The Company shall pay for such examination. Any period of total disability shall be deemed to be continuing until the disabled person has either died or has not meet the definition set forth above for a period of three consecutive calendar months.

(ii) **Option to Purchase Membership Interest:** After a Member has been totally disabled for a continuous period of twelve (12) months, the remaining Members shall have an Option to purchase all (but not less than all) of the Membership Interest then owned by the totally disabled Member, upon the price and terms set forth in the Agreement. Such Option shall be exercisable by written notice from the remaining Members to the disabled Member (or his personal representative). This Option shall be exercisable until the first to occur of (1) the termination of the disability by recovery or death, (2) the other conveyance of all the Membership Interest of the disabled Member in accordance with the terms and conditions of this Agreement.

8.05 **Absolute Prohibition.** Notwithstanding any other provision in this Article VIII, the Membership Interest of a Member, in whole or in part, or any rights to distributions there from, shall not be sold, exchanged, conveyed, assigned, pledged, hypothecated, subjected to a security interest or otherwise transferred or encumbered, if, as a result thereof, the Company would be terminated for federal income tax purposes in the opinion of counsel for the Company or such action would result in a violation of federal or state securities laws in the opinion of counsel for the Company.

8.06 **Transferee Acquiring Interest in Company.** No Person, other than the initial Members, who is a transferee of a Membership Interest in the Company shall be admitted as a Member of the Company, except upon the affirmative vote of the non-assigning Members holding a majority of the Membership Interest not being assigned.

8.07 **Resignation.** No Member shall be entitled to resign from the Company except upon the unanimous written consent of the Members. Any attempted resignation, without such consent shall be of no force or effect.

8.08 **Effect of Prohibited Action.** Any transfer or other action in violation of this Operating Agreement shall be void ab initio and of no force or effect whatsoever.

8.09 **Rights of an Assignee.** If an assignee of a Membership Interest is not admitted as a Member, such assignee shall nevertheless be entitled to receive such distributions from the Company as the assigning Member would have been entitled to receive under Section 6.07 of this Operating Agreement with respect to such Membership Interest had the assigning Member retained such Membership Interest.

8.10 **Mexican Shootout.** Notwithstanding the other provisions of Article VIII, in the event there arises a disagreement involving the management of the Company, a Member (the "Initiating Member") shall have the right to offer to purchase the entire Membership Interest of

all the other Members (the "Responding Members") by delivering a written notice to the Responding Members stating the purchase price for such purchase and the terms of payment. The Responding Members shall have 90 days to deliver a written notice to the Initiating Member stating whether one or more of the Responding Members accepts such offer on the terms proposed or elect to purchase the Initiating Member's entire Membership Interest on the same terms as proposed by the Initiating Member, adjusted to reflect the difference in Membership Interest (for example: if the Responding Members own 75% of the Membership Interest in the Company and the Initiating Member offers to pay \$75 for their Membership Interest, the Responding Members may purchase the Initiating Member's Membership Interest in the Company for \$25 [$\$75 / 75\% = \$100 \times 25\% = \25]). If one or more of the Responding Members so elect to purchase the Membership Interest of the Initiating Member, the Initiating Member must sell his Membership Interests in accordance with the terms of the initial offer. The purchase by the Initiating or Responding Member, as the case may be, contemplated above must take place within 30 days after the expiration of the 90 day period described above. Each Member shall pay his own costs in connection with any such purchase or sale. In addition to the amount for the Membership Interest, the offer must also include the payment of any loans made to the Company by the Member or Members who are selling.

ARTICLE IX

DISSOLUTION AND TERMINATION

9.01 Event of Dissolution. The Company shall be dissolved upon the first to occur of the following:

- (a) Any event which under the Articles requires dissolution of the Company.
- (b) The unanimous written consent of the Members to the dissolution of the Company.
- (c) At any time there are no members; however, unless otherwise provided in the Articles, the limited liability company is not dissolved and is not required to be wound up if, within six months or such period as is provided for in the Articles after the occurrence of the event that caused the dissociation of the last remaining member, the personal representative of the last remaining member agrees in writing to continue the limited liability company until the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that caused the dissociation of the last remaining member.
- (d) The entry of a decree of judicial dissolution of the Company as provided in the Act.
- (e) Any event not set forth above which under the Act requires dissolution of the Company.

9.02 Liquidation. Upon the dissolution of the Company, it shall wind up its affairs and distribute its assets in accordance with the Act by either or a combination of both of the following methods as the Members shall determine:

(a) Selling the Company's assets and, after the payment of Company liabilities, distributing the net proceeds therefrom to the Members in proportion to their Membership Interests and in satisfaction thereof, and/or

(b) Distributing the Company's assets to the Members in kind with each Member accepting an undivided interest in the Company's assets, subject to its liabilities, in satisfaction of his Membership Interest. The interest conveyed to each Member in such assets shall constitute a percentage of the entire interests in such assets equal to such Member's Membership Interest.

9.03 Orderly Liquidation. A reasonable time as determined by the Managers not to exceed eighteen (18) months shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to the creditors so as to minimize any losses attendant upon dissolution.

9.04 Distributions. Upon liquidation, the Company assets (including any cash on hand) shall be distributed in the following order and in accordance with the following priorities:

(a) First, to the payment of the debts and liabilities of the Company and the expenses of liquidation, including a sales commission to the selling agent, if any; then

(b) Second, to the setting up of any reserves which the Managers (or the person or persons carrying out the liquidation) deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the Managers (or the person or persons carrying out the liquidation) shall deem advisable, but in no event to exceed 18 months, the Company shall distribute the balance thereof in the manner provided in the following subsections; then

(c) Third, to the Members to the extent of their respective positive Capital Account balances in the ratio of said Capital Accounts, after first taking into account the allocations prescribed by Section 9.05 below; then

(d) Fourth, to the Members in proportion to their respective Membership Interests.

(e) In the event of a distribution in liquidation of the Company's property in kind, the fair market value of such property shall be determined by a qualified and disinterested M.A.I. appraiser actively engaged in appraisal work in Newport News, selected by the Managers (or the person or persons carrying out the liquidation), and each Member shall receive an undivided interest in such property equal to the portion of the proceeds to which he would be entitled under the immediately preceding subsections if such property were sold at such fair market value.

9.05 Taxable Gain or Loss. Taxable income, gain and loss from the sale or distribution of Company property incurred upon or during liquidation and termination of the Company shall be allocated to the Members as provided in Section 6.08 above.

9.06 No Recourse Against Members. Except as provided by law, upon dissolution, each Member shall look solely to the assets of the Company for the return of his Capital Contribution. If the Company property remaining after the payment or discharge of the debts

EXHIBIT A

<u>MEMBER</u>	<u>MEMBERSHIP INTEREST</u>
James R. Smith	99 %
Brambleton Avenue Associates, Inc.	<u>1 %</u>
TOTAL	100%

10.08 Rights and Remedies Cumulative. The rights and remedies provided by this Operating Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Such rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.09 Severability. If any provision of this Operating Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Operating Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

10.10 Heirs, Successors and Assigns. Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Operating Agreement, their respective heirs, legal representatives, successors and assigns.

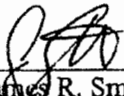
10.11 Creditors. None of the provisions of this Operating Agreement shall be for the benefit of or enforceable by any creditor of the Company.

10.12 Counterparts. This Operating Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

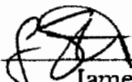
10.13 Entire Agreement. This Operating Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all prior negotiations, conversations, discussions, correspondence, memoranda and agreements between the parties concerning such subject matter.

The undersigned, being all the Members of the Company, hereby agree, acknowledge and certify that the foregoing Operating Agreement constitutes the sole and entire Operating Agreement of the Company, unanimously adopted by the Members of the Company as of the date first written above.

MEMBERS:


James R. Smith

Brambleton Avenue Associates, Inc.,

By: 
James R. Smith, President



STATE CORPORATION COMMISSION

Richmond, May 30, 2006

This is to certify that the certificate of organization of

PR Homes LLC

was this day issued and admitted to record in this office and that the said limited liability company is authorized to transact its business subject to all Virginia laws applicable to the company and its business. Effective date: May 30, 2006



State Corporation Commission

Attest:

Joel H. Beck
Clerk of the Commission

LIMITED LIABILITY COMPANY OPERATING AGREEMENT
OF PRMC, LLC

This Limited Liability Company Operating Agreement (this "***Agreement***") of PRMC, LLC, is effective as of the 14th day of July, 2015 by SP PR MC, LLC, a Virginia limited liability company, as its member (the "***Member***"). Capitalized terms used herein but not defined herein shall have the respective meanings ascribed to such capitalized terms in the Investment Agreement dated August 1, 2015, among affiliates of the Member and others, as the same may be from time to time amended (the "***Investment Agreement***").

The Member in accordance with the Virginia Limited Liability Company Act, as amended from time to time (the "***Act***"), hereby agrees with the Company as follows:

1. Name. The name of the limited liability company shall be PRMC, LLC (the "Company").

2. Purpose.

(a) The Company is formed for the object and purpose of and the nature of the business to be conducted and promoted by the Company is, to acquire, hold, maintain, develop, improve, operate, sell, lease, finance, dispose of and otherwise invest in real property located in Roanoke City, Virginia, plus any contiguous land acquired to enhance such real property.

(b) In furtherance of the Company's purpose and subject to the provisions hereof, the Company shall have the power to enter into and perform contracts, own, mortgage, lease, pledge or otherwise deal with assets, exercise all rights, powers, and privileges and other incidents of ownership with respect to assets or investments, borrow money and issue notes, drafts, and bills of exchange, lend any of its assets or funds, issue guaranties and indemnities, invest its liquid assets in short-term money market instruments and certificates of deposit, maintain one or more offices, rent space, engage and retain personnel and agents and undertake such other activities as may be necessary or desirable to achieve the Company's purpose.

3. Registered Office. The address of the registered office of the Company in the Commonwealth of Virginia is c/o 4423 Pheasant Ridge Road, Suite 301, Roanoke, VA 24014.

4. Registered Agent. The name and address of the registered agent of the Company for service of process on the Company in the Commonwealth of Virginia is Craig A. Penny.

5. Member. The name and the business, residence or mailing addresses of the Member is as follows:

Name

SP PR MC, LLC

Address

c/o Smith/Packett Med-Com, LLC
4423 Pheasant Ridge Road, Suite 301
Roanoke, Virginia 24014
Attention: Hunter D. Smith

6. Powers. The Company shall have the power and authority to do any and all acts necessary or convenient to or in furtherance of the purposes described in Section 2 hereof, including all power and authority, statutory or otherwise, possessed by, or which may be conferred upon, limited liability companies under the laws of the Commonwealth of Virginia.

7. Management; Officers.

(a) The management of the Company shall be vested in the Member. James R. Smith and Hunter D. Smith, acting individually or jointly, are hereby designated as authorized persons within the meaning of the Act, to execute, deliver and file the certificate of formation of the Company and, together with other persons that may hereafter be designated, such other certificates as may be necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business.

(b) Subject to the terms and conditions hereinafter set forth, the Member appoints James R. Smith as Chairman Manager and Hunter D. Smith as Vice Chairman Manager of the Company. In such capacities, James R. Smith and Hunter D. Smith shall each have the authority, acting individually or together, from time to time to execute, acknowledge and deliver, in the name and on behalf of the Company, any and all documents, instruments and agreements, but only if directed to do so by the Member. The Member may revoke such authority and terminate James R. Smith or Hunter D. Smith, or both of them, at any time, with or without cause, by providing written notice to the terminated officer or officers. Such delegation of authority by the Member shall not cause the Member to cease to be the "manager" of the Company within the meaning of the Act. The Member, in its sole discretion, may ratify any act previously taken by an officer or agent acting on behalf of the Company.

8. Reliance by Third Parties. Any person or entity dealing with the Company may rely upon a certificate signed by the Member as to:

(a) the persons who or entities which are authorized to execute and deliver any instrument or document of or on behalf of the Company, and

(b) the persons who or entities which are authorized to take any action or refrain from taking any action as to any matter whatsoever involving the Company.

9. Dissolution. The Company shall have perpetual existence unless it shall be dissolved and its affairs shall have been wound up upon (a) the death, retirement, resignation, permanent disability, bankruptcy or dissolution of the Member or the adjudication of insolvency of the Member pursuant to a judgment or order which remains in force for ninety (90) days after its entry, (b) the sale, foreclosure or other disposition of all or substantially all of the property of the Company and the collection by the Company and distribution to the Member of all proceeds directly or indirectly from such sale (whether such proceeds be cash, notes or other property), but a disposition referred to in this subsection does not include the granting of a lien or security interest in any property of the Company, (c) the written consent of the Member, (d) the issuance of a decree by a court of the dissolution of the Company, or (e) the bankruptcy of the Company.
10. Capital Contributions. The Member has contributed \$10 in cash, and other good and valuable consideration, as its initial capital contribution to the Company.
11. Additional Contributions. The Member may make, but shall not be required to make, any additional capital contributions to the Company.
12. Allocation of Profits and Losses. The Company's profits and losses shall be allocated to the Member.
13. Distributions. Distributions shall be made to the Member at the times and in the aggregate amounts determined by the Member.
14. Assignments. The Member may assign its limited liability company interest to any person, which person shall become a Member upon the filing of the instrument of assignment with the records of the Company.
15. Resignation. The Member may not resign from the Company.
16. Amendments. This Agreement may be amended or restated from time to time by the Member.
17. Liability of Member. The Member shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act.
18. Liability and Indemnification. To the fullest extent permitted by applicable law, the Member and its Affiliates (collectively, the "**Indemnified Parties**") are hereby indemnified by the Company for any loss, damage or claim by reason of any act or omission performed or omitted by it on behalf of the Company and in a manner reasonably believed by it or them to be within the scope of the authority conferred on it by this Agreement, except that the Indemnified Parties shall not be entitled to be indemnified in respect of any loss, damage or claim incurred by it by reason of fraud, embezzlement, gross negligence, willful misconduct or breach of its fiduciary duty with respect to such acts or omissions; provided, however, that any indemnity under this Section 18 shall be provided out of and to the extent of Company assets only, and the Member shall have personal liability on account thereof, or be required to make a capital contribution or loan to indemnify or otherwise reimburse any Indemnified Party. The losses, damages and claims for which the Indemnified Parties are indemnified hereunder shall include any loss, damage or claim under any guaranty or indemnity executed by an Indemnified Party

with respect to any indebtedness of the Company so long as such indemnification is permitted by the terms of the applicable guaranty, indemnity and associated loan documents and such loss, damage or claim does not result from the fraud, embezzlement, gross negligence, willful misconduct or intentional breach of a material fiduciary duty of such Indemnified Party. As used herein, the term "**Affiliate**" shall mean, with respect to any Member, a person or entity that (i) is directly or indirectly (through one or more intermediaries) in control of, under common control with, or controlled by a Member or (ii) is related by blood or marriage to an individual that directly or indirectly (through one or more intermediaries) controls a Member or (iii) is a person or entity that directly or indirectly (through one or more intermediaries) is in control of, under common control with, or controlled by a person or entity that is an Affiliate of a Member pursuant to clause (i) or clause (ii). For purposes of this definition, "control" means either (A) ownership of 10 percent (10%) or more of the beneficial interest in an entity, or (B) possessing voting power with respect to an entity or otherwise possessing the power to direct the management and policies of an entity by contract or otherwise.

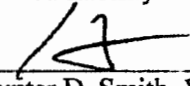
19. Governing Law. This Agreement shall be governed by, and construed under, the Laws of the Commonwealth of Virginia, all rights and remedies being governed by said laws.

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, has duly executed this Agreement as of the date and year first aforesaid.

MEMBER:

SP PR MC, LLC

By: Smith/Packett Med-Com, LLC, a Virginia
limited liability company, its manager

By: 
Hunter D. Smith, Vice Chairman Manager

ZONING DISTRICT MAP

4414 Pheasant Ridge Road SW;
0, 4345, 0, 0, 0 Griffin Rd. SW;
and 0, 0, 0 Van Winkle Rd. SW
Official Tax Parcels: 5460124,
5470301, 5470302, 5470303,
5470304, 5470305, 5470306,
5470307, 5470308



Area to be Rezoned



Conditional Zoning

Zoning

RA (Residential-Agriculture)

R-12 (Res. Single-Family)

R-7 (Res. Single-Family)

R-5 (Res. Single-Family)

R-3 (Res. Single-Family)

RM-1 (Res. Mixed Density)

RM-2 (Res. Mixed Density)

RMF (Res. Multi-Family)

CN (Commercial-Neigh)

CG (Commercial-General)

CLS (Commercial-Large Site)

I-1 (Light Industrial)

I-2 (Heavy Industrial)

D (Downtown)

MX (Mixed Use)

IN (Institutional)

ROS (Rec & Open Space)

AD (Airport Dev)

MXPUD (Mixed Use Planned Unit Dev)

INPUD (Institutional Planned Unit Dev)

IPUD (Industrial Planned Unit Dev)

UF (Urban Flex)

MX 22

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C.4.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE to amend §36.2-100, Code of the City of Roanoke (1979), as amended, and the Official Zoning Map, City of Roanoke, Virginia, dated December 5, 2005, as amended, to amend the Institutional Planned Unit Development Plan, as it pertains to 4414 Pheasant Ridge Road, S.W., bearing Official Tax Map No. 5460124; 4345 Griffin Road, S.W., bearing Official Tax Map No. 5470302; four unaddressed lots on Griffin Road, S.W., bearing Official Tax Map Nos. 5470301, 5470303, 5470304, 5470305; and three unaddressed lots on Van Winkle Road, S.W., bearing Official Tax Map Nos. 5470306, 5470307, 5470308; and dispensing with the second reading of this ordinance by title.

WHEREAS, PRMC, LLC, has made application to the Council of the City of Roanoke, Virginia ("City Council"), to amend the Institutional Planned Unit Development Plan ("Plan"), to permit construction of buildings housing a memory care facility and assisted living facility for seniors as previously permitted by Ordinance No. 40190-031615, adopted by City Council on March 16, 2015, as such Plan pertains to the parcels bearing Official Tax Map Nos. 5460124, 5470301, 5470302, 5470303, 5470304, 5470305, 5470306, 5470307, and 5470308;

WHEREAS, the City Planning Commission, after giving proper notice to all concerned as required by §36.2-540, Code of the City of Roanoke (1979), as amended, and after conducting a public hearing on the matter, has made its recommendation to City Council;

WHEREAS, a public hearing was held by City Council on such application at its meeting on October 19, 2015, after due and timely notice thereof as required by §36.2-540, Code of the City of Roanoke (1979), as amended, at which hearing all parties in interest and citizens were given an opportunity to be heard, both for and against the amendment of the Plan proffered as a condition of

the conditional rezoning, for the properties described as Official Tax Map Nos. 5460124, 5470301, 5470302, 5470303, 5470304, 5470305, 5470306, 5470307, and 5470308; and

WHEREAS, this Council, after considering the aforesaid application, the recommendation made to the Council by the Planning Commission, the City's Comprehensive Plan, and the matters presented at the public hearing, finds that the public necessity, convenience, general welfare and good zoning practice, require the amendment of the Plan as it pertains to the parcels bearing Official Tax Map Nos. 5460124, 5470301, 5470302, 5470303, 5470304, 5470305, 5470306, 5470307, and 5470308, as herein provided.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. Section 36.2-100, Code of the City of Roanoke (1979), as amended, and the Official Zoning Map, City of Roanoke, Virginia, dated December 5, 2005, as amended, be amended to reflect the amendment of the Plan as it pertains to 4414 Pheasant Ridge Road, S.W., bearing Official Tax Map No. 5460124; 4345 Griffin Road, S.W., bearing Official Tax Map No. 5470302; and four unaddressed lots on Griffin Road, bearing Official Tax Map Nos. 5470301, 5470303, 5470304, 5470305; and three unaddressed lots on Van Winkle Road, bearing Official Tax Map Nos. 5470306, 5470307 and 5470308, as set forth in the Zoning Amendment Amended Application No. 1 dated September 22, 2015.

2. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



Daniel J. Callaghan
City Attorney

CITY OF ROANOKE
OFFICE OF THE CITY ATTORNEY
464 MUNICIPAL BUILDING
215 CHURCH AVENUE, SW
ROANOKE, VIRGINIA 24011-1595

TELEPHONE 540-853-2431
FAX 540-853-1221
EMAIL: cityatty@roanokeva.gov

Timothy R. Spencer
Steven J. Talevi
David L. Collins
Heather P. Ferguson
Laura M. Carini
Assistant City Attorneys

October 19, 2015

The Honorable David Bowers, Mayor
and Members of City Council
Roanoke, Virginia

Re: Authorize Conveyance of Easements across Portions of City
Owned Property Designated as Official Tax Map No. 2050402,
2050305, 2050306, and 2050307, to the Commonwealth of
Virginia, Department of Transportation in Support of the 10th
Street Improvement Project

Dear Mayor Bowers and Members of Council:

Background:

By Ordinance No. 39890-031714, adopted on March 17, 2014, City Council authorized the conveyance of approximately 1.13 acres of City-owned property designated as portions of Official Tax Map Nos. 2050402 and 2050307, which area is a portion of Brown-Robertson Neighborhood Park ("Park") to the Commonwealth of Virginia, Department of Transportation ("VDOT"), in exchange for approximately 0.289 acres of land to be conveyed to the City by VDOT located at 1522 10th Street, NW. This exchange of properties was to be made in connection with VDOT's 10th Street Improvement Project ("Project"). The National Park Service approved the exchange as required by the restrictions which encumber the Park property.

Subsequently, VDOT revised its plans and sought to acquire approximately 0.556 acres of land rather than the 1.13 acres of land that was a portion of the Park. By Ordinance No. 40305-072015, adopted on July 20, 2015, City Council authorized the vacation of a 0.556 portion of Brown-Robertson Park as depicted on a plat prepared by VDOT. While the VDOT plat depicted the area of City-owned land to be acquired by VDOT accurately, the plat misidentified one of the City-owned parcels as Official Tax Map No. 2050307, as the area affected where, in actuality, the 0.556 acres consisted of portions of Official Tax Map Nos. 2050305, 2050306, and 2050307. VDOT has since corrected its plat to properly identify the tax parcels. The actual area of City-owned property to be conveyed to VDOT is unaffected by this error in references to tax map parcels.

The plats prepared by VDOT also depict a temporary construction easement encumbering approximately 0.775 acres of land located on portions of Official Tax Map No. 2050402, 2050305, 2050306, and 2050307, and a permanent drainage easement encumbering approximately 0.239 acres of land located on a portion of Official Tax Map No. 2050402 to be conveyed to VDOT by the City. These easements were not previously authorized by City Council.

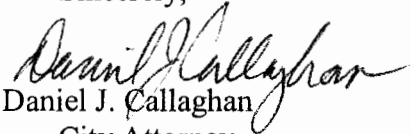
Considerations:

VDOT has informed the City that it needs to acquire these property interests in order for VDOT to be able to certify the Project to the Federal Highway Administration for advertisement and construction. Without this certification, VDOT has informed City staff that the schedule for the Project cannot be maintained. Because the proposed easements will not prevent the area of the land across which the easements will be placed from being used for park purposes, and the City will still be considered the owner of such land, this matter is not required to be placed before the Planning Commission for referral to City Council. VDOT has already obtained approval from the National Park Service for the conveyance of these easements by the City to VDOT. Conveyance of the easements is in the best interests of the City and its citizens. The public hearing will additionally give City Council the opportunity to ratify and confirm its intent to convey portions of Official Tax Map Nos. 2050305 and 2050306, along with a portion of Official Tax Map No. 2050307, to VDOT, pursuant to Ordinance No. 39890-031714.

Recommended Action:

Authorize the City Manager to execute the necessary documents providing for the conveyance of a permanent drainage easement to VDOT across a portion of the Park, designated as Official Tax Map No. 2050402, and the conveyance of a temporary construction easement to VDOT across a portion of the Park, designated as Official Tax Map Tax Map Nos. 2050305, 2050306, and 2050307; ratify and confirm City Council's intent pursuant to Ordinance No. 39890-031714 to convey portions of Official Tax Map Nos. 2050305 and 2050306, along with a portion of Official Tax Map No. 2050307, to VDOT in fee simple, such conveyances to be in support of the VDOT's 10th Street Improvement Project. All documents shall be upon form approved by the City Attorney.

Sincerely,


Daniel J. Callaghan
City Attorney

c: Christopher P. Morrill, City Manager
R. Brian Townsend, Assistant City Manager
for Community Development
Sherman Stovall, Assistant City Manager
for Operations
Barbara Dameron, Director of Finance
Troy D. Harmon, City Auditor
Stephanie Moon Reynolds, City Clerk
Robert Bengtson, Director of Public Works
Mark Jamison, Manager of Transportation



DH

C.5.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the conveyance of a permanent drainage easement containing approximately 0.239 acres across City-owned property known as a portion of Brown-Robertson Neighborhood Park situated at 0 (zero) 10th Street, N.W. ("Park"), designated as a portion of Roanoke Official Tax Map No. 2050402, and a temporary construction easement containing approximately 0.775 acres, across a portion of the Park, such portion being parts of the lots designated as Roanoke Official Tax Map Nos. 2050402, 2050305, 2050306, and 2050307, (collectively, the "Easements") to the Commonwealth of Virginia, Department of Transportation ("VDOT"), such Easements in support of VDOT's 10th Street Improvement Project ("Project"); authorizing the City Manager to execute deeds of easements and other necessary documents to convey the Easements to VDOT; ratifying and confirming City Council's intent for the fee simple conveyance to VDOT of a 0.556 acre portion of the Park consisting of Roanoke Tax Map Nos. 2050402, 2050305, 2050306 and 2050307, as authorized by Ordinance No. 39890-031714, upon certain terms and conditions; and dispensing with the second reading of this ordinance by title.

WHEREAS, pursuant to Ordinance No. 39890-031714, adopted by City Council on March 17, 2014, City Council authorized the conveyance to VDOT of approximately 1.13 acres of City-owned property designated as portions of Official Tax Map Nos. 2050402 and 2050307, as such parcels were identified on the plat attached to the City Council Agenda Report dated March 17, 2014;

WHEREAS, subsequent to the adoption of Ordinance No. 39890-031714, VDOT revised the Project's plans and only required a 0.556 acre portion of the City owned parcels identified above;

WHEREAS, pursuant to Ordinance No. 40305-072015, adopted by City Council on July 20, 2015, City Council authorized the vacation of an approximately 0.556 acre portion of the Park designated as portions of Official Tax Map Nos. 2050402 and 2050307, as such parcels were identified on the plat attached to the July 20, 2015, City Council Agenda Report,

WHEREAS, VDOT misidentified the area designated on the plat as Roanoke Official Tax Map. No. 2050307, as the area affected by the Project in actuality consisted of Roanoke Official Tax Map Nos. 2050305, 2050306, and 2050307, and the plat was subsequently revised by VDOT to correct this error, although the square footage of the area to be conveyed VDOT as shown on the original plat remained the same;

WHEREAS, VDOT needs the Easements in connection with the Project; and

WHEREAS, a public hearing was held on October 19, 2015, pursuant to Sections 15.2-1800 and 15.2-1813, Code of Virginia (1950), as amended, at which hearing all parties in interest and citizens were afforded an opportunity to be heard on the conveyance of such Easements.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke that:

1. The granting of the Easements to VDOT, as more particularly described in the City Attorney Letter to City Council dated October 19, 2015, is hereby approved. The City Manager is hereby authorized, for and on behalf of the City, to execute the necessary documents providing for the conveyance to VDOT of (1) a permanent drainage easement containing approximately 0.239 acres across City-owned property known as a portion of the Park, designated as a portion of Roanoke Official Tax Map No. 2050402; and (2) a temporary

construction easement containing approximately 0.775 acres, across City-owned property known as a portion of the Park, and said portion being portions of City-owned properties designated as Roanoke Official Tax Map Nos. 2050402, 2050305, 2050306, and 2050307 (collectively, the “Easements”). Conveyance of the Easements to VDOT is in support of the Project, and as more particularly stated in the City Attorney Letter to City Council dated October 19, 2015.

2. City Council hereby confirms and ratifies its actions pursuant to Ordinance No. 39890-031714, adopted by City Council on March 17, 2014, to provide for the conveyance to VDOT of a 0.556 acre portion of the Park in fee simple consisting of portions of City-owned parcels designated as Official Tax Map Nos. 2050305, 2050306, and 2050307 and a portion of a City-owned parcel designated as Roanoke Official Tax Map No. 2050402.

3. All documents necessary for the above conveyances shall be in form approved by the City Attorney.

4. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



Daniel J. Callaghan
City Attorney

CITY OF ROANOKE
OFFICE OF THE CITY ATTORNEY
464 MUNICIPAL BUILDING
215 CHURCH AVENUE, SW
ROANOKE, VIRGINIA 24011-1595

TELEPHONE 540-853-2431
FAX 540-853-1221
EMAIL: cityatt@roanokeva.gov

C.6.
Timothy R. Spencer
Steven J. Talevi
David L. Collins
Heather P. Ferguson
Laura M. Carini
Assistant City Attorneys

October 19, 2015

The Honorable David Bowers, Mayor
and Members of City Council
Roanoke, Virginia

Re: Authorize Vacation of Drainage Easement Previously
Dedicated to City Across Official Tax Map Nos. 5100534
and 5100535, and Dedication of New Drainage Easement
Across Official Tax Map No. 5100527 in Support of the
Gatewood Green Development

Dear Mayor Bowers and Members of Council:

Background:

The City of Roanoke, Virginia, was previously dedicated an existing 15' storm drain easement across Official Tax Map Nos. 5100534 and 5100535, by plat on record in the Clerk of Circuit Court's Office for the City of Roanoke in Map Book 1, Page 1165. Gatewood Green, LLC ("Gatewood Green") currently owns these parcels, together with properties designated as Official Tax Map Nos. 5100528 and 5100527, all of which parcels are located at the intersection of Mcvitty Road, S.W., and Gatewood Ave. S.W., in the City of Roanoke. Gatewood Green is currently developing these parcels for medical office buildings and other commercial purposes, and has requested the City to vacate the existing 15' storm drain easement in order to accommodate the development.

In exchange for vacating the existing storm drain easement, a new 10' public drainage easement will be dedicated to the City across Official Tax Map No. 5100527, and a variable width private drainage easement across Official Tax Map No. 5100535 to be maintained by Gatewood Green will be created, to allow for stormwater drainage.


Considerations:

Vacation of the existing drainage easement by the City is necessary in order for the parcels referenced above to be developed for commercial purposes, and is in the best interests of the City and its citizens.

Recommended Action:

Authorize the City Manager to execute the necessary documents that vacate the existing easement previously dedicated to the City across Official Tax Map No. 5100534 and 5100535, and to accept the dedication to the City of the proposed new 10' drainage easement across Official Tax Map No. 5100527. All such documents shall be upon form approved by the City Attorney.

Sincerely,


Daniel J. Callaghan
City Attorney

- c: Christopher P. Morrill, City Manager
R. Brian Townsend, Assistant City Manager
for Community Development
Sherman Stovall, Assistant City Manager
for Operations
Barbara Dameron, Director of Finance
Troy D. Harmon, City Auditor
Stephanie Moon Reynolds, City Clerk
Robert Bengtson, Director of Public Works
Dwayne D'Ardenne, Stormwater Manager

1)2C

C.6.

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the City Manager to execute the appropriate documents for the vacation of an existing 15' drain easement held by the City across private real property designated as Roanoke Official Tax Map Nos. 5100534 and 5100535, owned by Gatewood Green, LLC ("Gatewood"), in exchange for the dedication of a new 10' drainage easement to the City across an adjacent parcel of real property owned by Gatewood designated as Roanoke Official Tax Map No. 5100527, in connection with Gatewood's development of such real property for commercial purposes, upon certain terms and conditions; and dispensing with the second reading of this ordinance by title.

WHEREAS, a public hearing was held on October 19, 2015, pursuant to Sections 15.2-1800 and 15.2-1813, Code of Virginia (1950), as amended, at which hearing all parties in interest and citizens were afforded an opportunity to be heard on the proposed vacation of the drainage easement; and

WHEREAS, the vacation of the existing drainage easement is in the best interests of the City and its citizens as more particularly described in the City Attorney Letter to City Council dated October 19, 2015.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. City Council hereby consents to and approves the vacation of the existing 15' drainage easement held by the City across private real property owned by Gatewood designated as Roanoke Official Tax Map Nos. 5100534 and 5100535, and accepts the dedication by Gatewood to the City of the new 10' drainage easement across private real property owned by Gatewood designated as Roanoke Official Tax Map No. 5100527, in connection with Gatewood's development of such property for commercial purposes, upon such terms and conditions, as are more particularly described in the City Attorney Letter to Council dated October 19, 2015, and the plat attached to that report.

2. The City Manager is authorized to execute on behalf of the City of Roanoke, the appropriate documents providing for the vacation of such 15' drainage easement, and the dedication to the City of such 10' drainage easement. All such documents shall be upon form approved by the City Attorney.

3. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.



C.7.

CITY COUNCIL AGENDA REPORT

To: Honorable Mayor and Members of City Council
Meeting: October 19, 2015
Subject: Proposed Management Services Agreement and Lease with the Virginia Western Community College Educational Foundation, Inc. for the Lease Conveyance of City-Owned Property located at 709 South Jefferson Street

Background:

The Virginia Western Community College Educational Foundation, Inc. (Foundation) has expressed an interest to enter into a five year lease agreement with the City to operate an acceleration center (Acceleration Center) focused primarily on connecting early stage companies to peers, mentors, and investors at the property known as the former Gill Memorial Hospital Building (Gill Memorial Property) located at 709 South Jefferson Street (Official Tax Map No. 1020510). In addition to operating the Acceleration Center, the Foundation will also serve as sub-landlord and property manager for the Gill Memorial Property. Terms for the lease and management of the Gill Memorial Property are contained in the attached Management Services Agreement and Lease Agreement.

Renovation of the Gill Memorial Property for its use as an Acceleration Center will be financed by a \$600,000 grant provided to the City by the Virginia Department of Housing and Community Development's (DHCD) Industrial Revitalization Fund. The City will be entering into a separate contract with DHCD to accept those funds.

The Gill Memorial Property is approximately 11,616 square feet and consists of three stories and a basement situated on a 0.1671 acre parcel. The Gill Memorial Property is currently owned by Carilion Services, Inc. Carilion Services, Inc. and the City entered into an Option Agreement dated October 21, 2014, as amended (Option Agreement), pursuant to which Option Agreement, the City will acquire the Gill Memorial Property.

The Lease Agreement shall provide for a nominal annual rent of one dollar per year for a term of five years, which term commences on the date the Foundation, or its designee, first occupies the Gill Memorial Property.

Considerations:

Among the salient points to consider in relation to this Agreement are the following:

- The Foundation or its designee shall operate and manage the Acceleration Center, collect subtenant rents, and pay all operating expenses;
- The Roanoke-Blacksburg Innovation Network will assist the Foundation with the operation of the Acceleration Center in several ways, including:

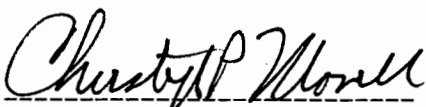
fundraising efforts, selection of staff, and recommendation of specific programs that support entrepreneurs and companies housed within the Acceleration Center;

- The Foundation is seeking additional funding from the Economic Development Authority of the City of Roanoke (EDA) in the form of an initial grant of \$40,000 to pay for the purchase of furniture and fixtures, and offset operating expenses, followed by a request for \$20,000 per year over a three-year period to offset operating expenses. The EDA will consider this request on October 21, 2015;
- The City will assist in offsetting any deficit in years when operating expenses exceed operating revenues by providing a cash payment to the Foundation. This payment is not to exceed \$25,000 per year. Attached is a financial pro forma that contains annual revenue and expense projections at different occupancy levels and assumes the EDA operating grant is approved; and The Foundation will be required to operate the Acceleration Center and manage the Gill Memorial Property for the first full year of the term. At any time after that first full year, the Foundation may notify the City of its desire to renegotiate the terms of the Management Services Agreement and the Lease Agreement. Should the two entities fail to agree on renegotiated terms after a period of ninety (90) days, the Foundation may terminate the Management Services Agreement and the Lease Agreement with six months written notice to the City.

Recommended Action:

Absent comments at the public hearing needing further consideration, approve the terms of the Management Services Agreement and Lease Agreement between the City and the Virginia Western Community College Educational Foundation, Inc., as set forth in the attachment to this report.

Authorize the City Manager to execute such Management Services Agreement and Lease Agreement between the City and the Virginia Western Community College Educational Foundation, Inc., substantially similar to the documents attached to this report, and to execute such other documents and to take such further actions as may be necessary to lease the Property and to implement, administer, and enforce such Management Services Agreement and Lease Agreement, with the forms of such Management Services Agreement, Lease Agreement, and any other documents to be approved as to form by the City Attorney.



Christopher P. Morrill
City Manager

Distribution: Council Appointed Officers

R. Brian Townsend, Assistant City Manager for Community Development

Barbara A. Dameron, Director of Finance

Wayne Bowers, Director of Economic Development

MANAGEMENT SERVICES AGREEMENT

This Management Services Agreement ("Agreement") is made this ____ day of October, 2015, between the **CITY OF ROANOKE, VIRGINIA**, a Virginia municipal corporation with an address of Noel C. Taylor Municipal Building, 215 Church Avenue, S.W., Roanoke, VA 24011 ("City") and **VIRGINIA WESTERN COMMUNITY COLLEGE EDUCATIONAL FOUNDATION, INC.**, a Virginia non-stock corporation ("Virginia Western Foundation").

RECITALS:

WHEREAS, the City has an option to purchase property designated as Roanoke Official Tax Map No. 1020510, located at 709 South Jefferson Street, Roanoke, VA, 24011, consisting of 0.1671 acres, more or less, together with a building and improvements thereon ("Property");

WHEREAS, the City entered into a Contract with the Virginia Department of Housing and Community Development ("DHCD") accepting funds from DHCD's Industrial Revitalization Fund to renovate and upgrade the Property;

WHEREAS, through a two-year strategic planning process undertaken by over 125 community stakeholders from private industry, higher education, and local government, the Innovation Blueprint was established to address weaknesses that hold back the Roanoke-Blacksburg region from prosperity;

WHEREAS, the lack of innovative and entrepreneurial companies within the Roanoke-Blacksburg region was identified chiefly among those weaknesses inhibiting such prosperity;

WHEREAS, the City desires to enter into this Agreement with Virginia Western Foundation, for Virginia Western Foundation, or its designee, to manage and operate a technology acceleration center ("Acceleration Center") focused primarily on connecting early stage companies to peers, mentors, and investors;

WHEREAS, the City desires to lease to the Virginia Western Foundation the Property, as renovated and upgraded (the "Leased Premises"), to manage and operate the Leased Premises, enter into a sublease with certain third parties, including but not limited to Virginia Western Community College, to manage certain day-to-day functions of the Acceleration Center and the Leased Premises, and allow Virginia Western Foundation to enter into additional sublease agreements with certain innovative and entrepreneurial companies that are consistent with the goals of the Acceleration Center;

WHEREAS, Virginia Western Foundation shall enter into the Lease Agreement attached to this Agreement as Exhibit A (the "Lease Agreement") upon the City's acquisition of the Property; and

WHEREAS, Roanoke City Council authorized the City Manager, on behalf of the City, to enter into this Agreement and the Lease Agreement with Virginia Western Foundation pursuant to Ordinance No. _____ dated October 19, 2015, following a public hearing on this matter.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, and the above recitals which are incorporated by reference herein, the parties agree as follows:

SECTION 1. PURPOSE

The goal of the City and Virginia Western Foundation under the terms of this Agreement is to increase the number of innovational and entrepreneurial companies within the Roanoke-Blacksburg region ("Cohort Companies") in accordance with the terms and conditions set forth in this Agreement.

To achieve this goal, Virginia Western Foundation has agreed that it or its designee will manage and operate an Acceleration Center focused primarily on connecting early stage companies to peers, mentors, and investors at the Leased Premises. Virginia Western Foundation shall exercise sole discretion, subject to the terms and conditions of this Agreement, the Lease Agreement, any limitations under the City's Grant Agreement with DHCD, in the management and operation of the Acceleration Center, including but not limited to subcontracting and/or outsourcing certain duties and responsibilities of the Acceleration Center and the Leased Premises to third parties.

SECTION 2. TERM OF AGREEMENT

This Agreement shall begin on the date set forth above and terminate on the earlier of: (i) the termination of this Agreement by either party according to the terms herein; or (ii) the expiration or termination of the Lease Term as defined and set forth in the Lease Agreement.

SECTION 3. SERVICES DURING RENOVATION

Virginia Western Foundation, or its designee, will assist in architect selection and design of renovations of the Property for the Leased Premises, and to provide technical assistance to the City during the renovation process.

SECTION 4. THE ACCELERATION CENTER

A. According to the terms and conditions contained herein, Virginia Western Foundation, or its designee, agrees to manage and operate the Accelerator Program at the Leased Premises with the focus on increasing the number of innovational and entrepreneurial companies within the Roanoke-Blacksburg region. The Acceleration Center may consist of recruitment, training, education, networking, and mentoring of Cohort Companies selected by a panel of local professionals with the ultimate goal of graduating companies with the potential of high economic impact into the Roanoke-Blacksburg region. Program participants will spend approximately one (1) year as sublessees of Virginia Western Foundation at the Leased Premises; provided, however, that this Section shall in no way limit Virginia Western Foundation from entering into longer or shorter sublease terms. Under no circumstance shall a sublease between Virginia Western Foundation and a sublessee be for a term that extends beyond the end of the Lease Term set forth in the Lease Agreement.

B. Virginia Western Foundation, through one or more subcontractors, sublessees, affiliates or other third parties, shall carry out the following activities:

1. Provide staff to manage and maintain the Property and the Leased Premises consistent with this Agreement and the terms of the Lease Agreement;
2. Select and assign to Cohort Companies the requisite number of mentors necessary to advise, consult and guide each Cohort Company through the Acceleration Center program. Such volunteers shall be professionals recruited from the Roanoke-Blacksburg community, who possess the unique skillsets required to assist individual Cohort Companies, in the sole discretion of Virginia Western Foundation;
3. Satisfy all operating expenses of the Leased Premises. In any year that operating expenses exceed operating revenues, the City will assist with offsetting the deficit by providing a cash payment to the Virginia Western Foundation. The amount of this payment will be determined by subtracting all operating expenses for the Leased Premises from all revenues derived from the Leased Premises. No annual payment from the City shall exceed \$25,000.
4. Connect Cohort Companies to external resources;
5. Advise, consult, and support the activities of Cohort Companies; and
6. Assist the City in ensuring that the goals of this Agreement and the Lease Agreement are met.

C. The City and Virginia Western Foundation agree that Virginia Western Foundation may offer the above programs and services to outside participants in addition to the Cohort Companies of the Acceleration Center, provided such Cohort Companies are given the first opportunity to participate.

SECTION 5. MANAGEMENT OF THE ACCELERATION CENTER

A. During the term of this Agreement, the City grants Virginia Western Foundation an exclusive right to manage and operate the Acceleration Center Program. Virginia Western Foundation may also make portions of the Leased Premises available, from time to time, to community groups, organizations, businesses and other non-Cohort Company program participants with the goal of increasing activity within the Acceleration Center and/or earning revenue. All revenues earned from the Acceleration Center and the Leased Premises during the term hereof shall be the sole property of Virginia Western Foundation, shall be used first to pay the expenses of managing and operating the Acceleration Center, and, if any, funds remain may be used and applied in Virginia Western Foundation's sole discretion.

B. Virginia Western Foundation agrees to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Virginia Western Foundation further agrees that Virginia Western Foundation does not and shall not during the performance of this Agreement; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 6. CITY'S RESPONSIBILITY REGARDING GRADUATING COHORT COMPANIES

Development and graduation of Cohort Companies who can successfully conduct business within the Roanoke-Blacksburg Region is the primary focus of the Acceleration Center Program. The City has a significant interest in placing graduating Cohort Companies within the City of Roanoke. The City, or its agent, will assist graduating Cohort Companies with locating commercial space in the Roanoke area as follows:

1. The City, or its agent, will hold an initial meeting with a graduating Cohort Company to gain an understanding of the type of facility the graduating company is seeking;
2. The City, or its agent, will assist the graduating Cohort Company with making contact with owners of available facilities; and
3. The City, or its agent, may provide a graduating Cohort Company with such other assistance as may be available.

SECTION 7. MEETINGS AND REPORTS

A. Virginia Western Foundation shall provide a semi-annual report to the City which shall include, among other items, a list of current sublessees and/or Cohort Companies, operating expenses and any other operational details Virginia Western Foundation may wish to include regarding the Acceleration Center, and shall be substantially similar to the performance report included as Exhibit B to this Agreement.

B. The parties acknowledge that the renovation of the Leased Premises will be accomplished through grant funding provided by the DHCD. As such, there are reporting requirements for which the City is solely responsible to demonstrate that the Leased Premises and the Acceleration Center are used and/or operated as required by DHCD. Virginia Western Foundation shall assist the City in any and all ways necessary to ensure the City meets such reporting requirements to the complete satisfaction of DHCD.

C. The City remains entirely and solely responsible for meeting the requirements set by DHCD. The City specifically acknowledges and agrees that Virginia Western Foundation shall not be liable, at law or in equity, to the City, DHCD or any other party for any failure or shortcoming of the required reports, use of the Leased Premises and/or the Acceleration Center. Virginia Western Foundation acknowledges that it knows and understands the requirements and terms of the City's Grant Agreement with DHCD, and Virginia Western Foundation agrees that it shall take no action or do anything that is contrary to those requirements or would interfere with those requirements and satisfaction of those requirements by the City.

SECTION 8. EXECUTION OF LEASE AGREEMENT

Subject to the terms and conditions of this Agreement, upon the acquisition of the Property by the City, the City and Virginia Western Foundation agree to execute the Lease Agreement under which Lease Agreement the City agrees to lease to Virginia Western Foundation, and Virginia Western Foundation agrees to lease from the City, the Leased Premises.

SECTION 9. RESPONSIBILITY TO MANAGE THE LEASED PREMISES

As part of the Acceleration Center Program, Virginia Western Foundation, or its designee, will have the exclusive responsibility and obligation to manage the Leased Premises. Virginia Western Foundation, or a third party retained by Virginia Western Foundation, will recruit, interview, and screen potential companies who will qualify and meet the program criteria. Virginia Western Foundation, or a third party retained by Virginia Western Foundation, will assign space within the Leased Premises for each Cohort Company and other subtenant. Virginia Western Foundation, or a third party retained by Virginia Western Foundation, will manage Cohort Companies and Cohort Company space so that as Cohort Companies develop and need additional space, it can be provided. Virginia Western Foundation, or a third party retained by Virginia Western Foundation, will manage Cohort Companies' and other subtenant's use and access to common areas and meeting spaces. In managing the Acceleration Center Program and providing guidance and assistance to the Cohort Companies, Virginia Western Foundation, or a third party retained by Virginia Western Foundation, will:

1. Adequately staff the Acceleration Center with experienced and qualified personnel to manage operations;
2. Establish rental amounts that allow Virginia Western Foundation, or a third party retained by Virginia Western Foundation, flexibility to address the market and attract certain prospective Cohort Companies;
3. Recruit, interview, and screen potential Cohort Companies;
4. Negotiate sublease agreements with Cohort Companies. Sublease agreements shall include the terms and conditions contained in the Sample Sublease Agreement in Exhibit C; or such form of Sublease as is otherwise agreed to by Virginia Western Foundation and the City. Under no circumstance shall a sublease be for a term that expires after the Lease Term in the Lease Agreement. All subleases shall include a provision that provides that the sublease shall automatically terminate upon the expiration or early termination of this Agreement.
5. Provide ancillary services, such as certain audio-visual services at additional fees as applicable;
6. Provide a schedule of fees for ancillary services;
7. Collect rents and fees from Cohort Companies (or any other subtenants);
8. Monitor and enforce compliance with the sublease agreements;
9. Designate an emergency contact person and phone tree for facility-related emergencies.

SECTION 10. INDEMNIFICATION

A. Virginia Western Foundation agrees and binds itself, and shall require the same of any Cohort Company (or any other sublessee), to indemnify, keep and hold the City, its officers, agents, employees, and volunteers free and harmless from any and all claims, causes of action, damages, costs (including attorney's fees), or any liability on account of any injury or damage of any type to any third party persons or property growing out of or directly or indirectly resulting from any act or omission of Virginia Western Foundation arising from: (1) Virginia Western Foundation's use of the public ways or other areas of the Leased Premises in connection with this Agreement; (2) the operation, maintenance, repair or extension of the Leased Premises, but only to the extent such operation, maintenance, repair or extension is required of Virginia

Western Foundation under the Lease Agreement; (3) the failure, refusal or neglect of Virginia Western Foundation or a Cohort Company (or any other sublessee) to perform any duty imposed upon or assumed by Virginia Western Foundation or under this Agreement or any such sublease; (4) any claim made against the City made or arising out of any negligence or intentional misconduct of Virginia Western Foundation or a Cohort Company (or any other sublessee); or (5) any claim brought by a sublessee of Virginia Western Foundation against the City for any reason related to or arising from such sublessee's use of the Leased Premises; provided, however, that the City shall be responsible for those portions of the claims, causes of action, damages, costs or any liability relating to or arising from the City's duties hereunder, negligence or intentional misconduct. In the event that any suit or proceeding shall be brought against the City at law or in equity, either independently or jointly with Virginia Western Foundation or a Cohort Company (or any other sublessee) on account of the requirements and obligations of Virginia Western Foundation set forth above, Virginia Western Foundation, upon notice given to it by the City, will defend the City in any such action or other proceeding, at the cost of Virginia Western Foundation; and in the event of any settlement or final judgment being awarded against the City, either independently or jointly with Virginia Western Foundation, then Virginia Western Foundation will pay any such settlement or judgment or will comply with such decree, pay all reasonable costs and expenses of whatsoever nature and hold the City, its officers, agents, employees and volunteers harmless therefrom. Provided, however, the City shall not have the authority to enter into any settlement arising out of or relating to this Section 10 without the prior written consent of Virginia Western Foundation.

B. Virginia Western Foundation's liability to City arising from or related to this Lease Agreement and the Management Services Agreement for any claims or damages ("Claims") that are covered by the proceeds of Virginia Western Foundation's insurance programs, shall be limited to the actual insurance proceeds that are paid to or on behalf of Virginia Western Foundation. If the Claim is not covered by insurance required herein, the Foundation's liability shall be limited to \$125,000 or the amount of the Claim, whichever is less. If Virginia Western Foundation fails to maintain the insurance required herein, there shall be no cap on Virginia Western Foundation's liability for Claims.

SECTION 11. NONDISCRIMINATION

During the performance of this Agreement, Virginia Western Foundation agrees as follows:

A. Virginia Western Foundation will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Virginia Western Foundation. Virginia Western Foundation agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

B. Virginia Western Foundation, in all solicitations and advertisements for employees placed by or on behalf of Virginia Western Foundation, will state that Virginia Western Foundation is an equal employment opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. Virginia Western Foundation will include the provisions of the foregoing paragraphs A, B, and C in every contract, subcontract, or purchase order of over \$10,000, so that the provisions will be binding upon each contractor, subcontractor, or vendor.

SECTION 12. DRUG-FREE WORKPLACE

A. During the performance of this Agreement, Virginia Western Foundation agrees to (i) provide a drug free workplace for Virginia Western Foundation employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Virginia Western Foundation that Virginia Western Foundation maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

SECTION 13. FAITH BASED ORGANIZATIONS

Pursuant to Virginia Code Section 2.2-4343.1, all parties shall be advised that the City does not discriminate against faith-based organizations.

SECTION 14. TERMINATION OF AGREEMENT

A. Failure of the City or Virginia Western Foundation to comply with any of the terms and conditions of this Agreement or the Lease Agreement shall be considered a breach of this Agreement. Each party agrees to give the other party notice of any such breach. If the breach is not cured within thirty (30) days from the notice being sent, the breaching party shall be considered in default, and this Agreement may be terminated.

B. Neither the City nor Virginia Western Foundation shall assign this Agreement or the Lease Agreement in whole or in part to any person without the other party's written consent. The consent to one assignment shall not be deemed to be consent to another assignment. In the event this Agreement is assigned without prior written consent, this Agreement may be terminated.

C. Upon the expiration or termination of this Agreement, Virginia Western Foundation will surrender its rights and obligations to the Acceleration Center and the Leased

Premises to the City. Upon the termination or expiration of the Lease Agreement, this Agreement shall automatically terminate and be of no further force or effect.

D. Upon expiration or termination of this Agreement, the City's assignment to Virginia Western Foundation of future rents shall expire and all subleases between Virginia Western Foundation and its sublessees and other users shall terminate upon notice. All subleases shall include a provision that provides that the sublease shall automatically terminate upon the expiration or early termination of this Agreement. Virginia Western Foundation is entitled to receive all rents and other payments accrued prior to the expiration or termination date.

E. Virginia Western Foundation shall operate the Acceleration Center and the Leased Premises for the first full year of the Term. At any time after the first full year of the Term, Virginia Western Foundation may notify the City of Virginia Western Foundation's desire to renegotiate the terms of the Agreement. After 90 days following the receipt of the such notice, if the City and Virginia Western Foundation have not agreed upon the renegotiated terms of the Agreement, Virginia Western Foundation may terminate the Agreement and the Lease Agreement with six months written notice to the City.

SECTION 15. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows:

If to City, to:

City of Roanoke
Attn: Director of Economic Development
117 Church Avenue S.W.
Roanoke, Virginia 24011
Fax no. (540) 853-1213

If to Virginia Western
Foundation, to:

Virginia Western Community College Educational
Foundation, Inc.
3093 Colonial Avenue, S. W.
Roanoke, Virginia 24015
Attn: Dr. Angela Falconetti

With a copy to:

Woods Rogers, PLC
10 S Jefferson St SW
Suite 1400
Attn: Nick Conte, Esq.

SECTION 16. CITY APPROPRIATION OF FUNDS

All obligations or funding undertaken by the City in connection with this Agreement and all obligations of Virginia Western Foundation in connection with this Agreement are subject to the availability of funds and the appropriation of such funds by Roanoke City Council as may be necessary for such obligations or funding. In the event that funding is not provided, withdrawn,

or otherwise not made available, the City shall advise Virginia Western Foundation of such unavailability of funds and Virginia Western Foundation shall have the right to terminate this Agreement and the Lease Agreement upon 30 days written notice to the City.

17. MISCELLANEOUS

A. **Cooperation.** Each party agrees to cooperate with the other in executing any documents necessary to carry out the intent and purposes of this Agreement.

B. **Severability.** If any term of this Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Agreement which shall continue in full force and effect. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

C. **Authority.** The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacities as indicated.

D. **Counterparts Allowed.** This Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

E. **Compliance with Laws.** Virginia Western Foundation shall at all times comply with all applicable federal, state, and local laws, ordinances, and regulations, and obtain all required licenses required by the City of Roanoke and the Commonwealth of Virginia, and other regulatory agencies, necessary to operate Virginia Western Foundation's business.

F. **Successors.** The terms, conditions, provisions and undertakings of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

G. **Captions.** The paragraph Captions and Headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

H. **Governing Law.** By virtue of entering into this Agreement, Virginia Western Foundation and the City agree and submit themselves to a court of competent jurisdiction in the City of Roanoke, Virginia and further agree that this Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes, and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws.

I. **Waiver.** Virginia Western Foundation agrees that the City's waiver or failure to enforce or require performance of any term or condition of this Agreement or the City's waiver of any particular breach of this Agreement by Virginia Western Foundation extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or

conditions of this Agreement or a waiver of any other breaches of the Agreement by Virginia Western Foundation and does not bar the City from requiring Virginia Western Foundation to comply with all the terms and conditions of the Agreement and does not bar the City, except as otherwise provided and/or limited herein, from asserting any and all rights and/or remedies it has or might have against Virginia Western Foundation under this Agreement or by law.

J. Entire Agreement. This Agreement and its exhibits constitute the entire agreement and understanding of the parties, and supersede all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Agreement must be in writing and executed by both parties. Virginia Western Foundation acknowledges that it has participated in the drafting of this Agreement. In the event of a dispute concerning any provision of this Agreement, Virginia Western Foundation hereby acknowledges and agrees that it will not rely on any defense that any ambiguity in the Agreement should be construed against the drafter of the Agreement and Virginia Western Foundation waives that defense. Virginia Western Foundation agrees that the City shall have no responsibility, duty or obligation to provide Virginia Western Foundation any services, property, or items that are not otherwise indicated in this Agreement.

SIGNATURE PAGE TO FOLLOW

DRAFT DATE 10/12/2015

IN WITNESS WHEREOF, the parties have executed this Management Services Agreement by the following signatures by their authorized representatives.

ATTEST:

CITY OF ROANOKE, VIRGINIA, a Virginia
municipal corporation

City Clerk

By: _____
Christopher P. Morrill, City Manager

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

)
) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Christopher P. Morrill, City Manager, of the City of Roanoke, Virginia, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____
(SEAL)

DRAFT DATE 10/12/2015

VIRGINIA WESTERN COMMUNITY
COLLEGE EDUCATIONAL
FOUNDATION, INC.

By: _____
Printed Name _____
Title _____
Witness: _____

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

)
) to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, of the Virginia Western Community College Educational Foundation, Inc., a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____
(SEAL)

Approved as to Form:

Assistant City Attorney

Approved as to Execution

Assistant City Attorney

Authorized by Ordinance No.: _____

Management Services Agreement
Dated October ____, 2015 between City of Roanoke
And Virginia Western Community College Educational Foundation, Inc.

EXHIBIT A

Lease Agreement

LEASE AGREEMENT

This lease made this ____ day of October, 2015 ("Lease Agreement") by and between **CITY OF ROANOKE, VIRGINIA**, a Virginia municipal corporation, hereinafter called Lessor or the City, and the **VIRGINIA WESTERN COMMUNITY COLLEGE EDUCATIONAL FOUNDATION, INC.**, a Virginia non-stock corporation, hereinafter called Lessee.

RECITALS:

WHEREAS, the City and Lessee have entered into a Management Services Agreement dated October ____, 2015 (the "Management Services Agreement"), in which the Lessee has agreed to certain terms and conditions to manage and operate, or to have its designee manage and operate, a technology acceleration center ("Acceleration Center") focused primarily on connecting early stage companies to peers, mentors, and investors;

WHEREAS, the City desires to lease to Lessee that certain property, as described below, as renovated and upgraded, to manage and operate, or to have its designee manage and operate, the Acceleration Center at the leased premises and allow Lessee to enter into sublease agreements with third parties according to the terms contained herein; and

WHEREAS, the City desires to lease the Leased Premises to Lessee for such purposes as defined herein, upon the terms and conditions stated below.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and the Recitals set forth above which are incorporated herein and made a material part of this Lease, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged by the City and Lessee, the City and Lessee agree as follows:

SECTION 1. LEASED PREMISES

Lessor hereby leases to Lessee, and Lessee accepts such lease, of all that real property located in Roanoke, Virginia, designated as Roanoke Official Tax Map No. 1020510, located at 709 South Jefferson Street, Roanoke, VA, 24011, consisting of 0.1671 acres, more or less, together with a building and improvements thereon (the "Property"), as such Property has been,

and will be, renovated and improved in accordance with the Management Services Agreement and terms and conditions contained herein ("Leased Premises").

SECTION 2. CONDITION OF PREMISES

A. Lessor represents and warrants to Lessee that, as of the commencement of the Lease Term, the Leased Premises will be in compliance with all laws, ordinances and regulations of or relating to commercial property located in the City of Roanoke, VA, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), building codes and environmental laws. Lessee may enter into a sublease or subcontract agreement with Virginia Western Community College (the "College") or some other third party such that the College or designated third party shall be responsible for the day-to-day management of the Acceleration Center and the negotiation of one or more subleases with third parties, including but not limited to Cohort Companies (as defined in the Management Services Agreement). All subleases, other than any sublease between the Lessee and the College, shall be in a form with terms and conditions at the sole discretion of Lessee to be included as Exhibit C attached to the Management Services Agreement; and, provided further, that no such terms and conditions of any sublease shall conflict with the terms and conditions contained herein or in the Management Services Agreement. The form of any sublease between Lessee and the College shall be approved by Lessor, such approval not to be unreasonably withheld. Lessee acknowledges and agrees that at all times during the Lease Term (as defined in Section 3 below) two-thirds of the Leased Premises (or, 2 floors) shall be used by Lessee, the College, performing activities for the Accelerator Program, and/or Cohort Companies for the Accelerator Program; one-third of the Leased Premises may be used and/or subleased for any other purpose in accordance with all laws and this Lease Agreement

B. Lessee accepts the Leased Premises in their "AS IS" condition as of the commencement of the Lease Term. As of the date of the commencement of the Lease Term, all utility services will be adequate for the Lessee's intended use.

SECTION 3. LEASE TERM

A. The term of the Lease shall be a term of five (5) years from the date Lessee first occupies the Leased Premises, after renovations to the Property are substantially completed and a permanent certificate of occupancy is issued by the City of Roanoke Building, Planning and Development Department, and ending five (5) years after such date, subject to the termination rights of the parties as set forth in this Lease Agreement ("Lease Term"). Upon establishment of the date of occupation, the City and Lessee shall execute an estoppel letter that establishes (i) the Lease Term as set forth in this Lease Agreement; and (ii) the acceptance of the condition of the Leased Premises by Lessee.

B. Lessee shall operate the Acceleration Center and the Leased Premises for the first full year of the Term. At any time after the first full year of the Term, Lessee may notify the City of Lessee's desire to renegotiate the terms of the Lease. After ninety (90) days following the receipt of the such notice, if the City and Lessee have not agreed upon the renegotiated terms of the Lease, Lessee may terminate the Management Services Agreement and the Lease with six (6) months written notice to the City.

SECTION 4. RENT AMOUNT

In consideration of its Lease of the Property, Lessee shall pay to the City the sum of one dollar (\$1.00) per year, payable beginning on or before the beginning of the Lease Term and on each anniversary date of the beginning of the Lease Term. The City acknowledges and agrees that the rental amount set forth in this Section 4 is adequate consideration for this Lease Agreement and use of the Leased Premises by Virginia Western Foundation for the Lease Term, and the City hereby waives any and all defenses and arguments of or relating to inadequate consideration.

SECTION 5. ADDITIONAL RENT: TAXES AND OTHER CHARGES

A. In addition to payment of the rent as set forth above, Lessee shall timely pay any taxes, leasehold taxes, or charges in connection with this Lease Agreement or under any sublease, or other use and occupancy agreement that Lessee, Cohort Companies, or other sublessees or occupants may be required by law or regulation to pay. The parties acknowledge and agree that Lessee is a 501(c)(3) entity which exempts Lessee from certain taxes. Exemption from any tax, in accordance with laws and at the discretion of Lessee, shall relieve Lessee from its duty under this Section.

B. Lessee shall reimburse the City for all stormwater utility fees assessed by the City of Roanoke for the Leased Premises pursuant to Chapter 11.5 Code of the City of Roanoke (1979), as amended.

SECTION 6. RIGHT OF ENTRY

The Lessor shall have the right to enter the Leased Premises upon twenty-four (24) hours advance written notice (except in the event of an emergency, in which case Lessor shall have the right to immediate entry) for the purpose of making necessary repairs or inspections to ensure that the conditions of this Lease Agreement are being fulfilled. Any contractual deficiencies in the conditions of the Leased Premises will be brought to Lessee's attention. Lessee will attempt to rectify said deficiencies within ten (10) working days or any other mutually agreed upon time frame. If Lessee refuses or fails to rectify the deficiencies, the Lessor may terminate this Lease Agreement as provided in Section 17 of this Lease Agreement.

SECTION 7. MAINTENANCE OF LEASED PREMISES

A. Lessee will maintain the Leased Premises, including the interior of the building and all contents therein, in good repair at Lessee's sole cost and expense. Lessee's maintenance responsibilities include:

1. Custodial and basic day to day maintenance;
2. All costs for utility use (power, telecommunication, internet, water, sewer, garbage, etc.);
3. Routine and reasonable floor and carpet care at a minimum of twice a

- year;
- 4. Interior window cleaning;
- 5. Providing, cleaning and maintaining floor mats;
- 6. Providing pest control services;
- 7. Electrical system maintenance to include outlets, breakers, fuse boxes, etc. that are considered minor and not a major electrical system problem;
- 8. Plumbing to include repair of any small leaks and stoppages;
- 9. Replacement of fluorescent tubes and/or bulbs in light fixtures;
- 10. Snow and ice removal from parking lot and sidewalks; and
- 11. Elevator inspection and maintenance.

B. Lessee shall also be responsible for other routine and regular repairs to the building. Routine and regular repairs are those repairs with no one expense exceeding \$500, which may include but are not limited to:

- 1. Minor electrical work;
- 2. Plumbing repairs;
- 3. Painting; and
- 4. Glass repair.

C. Lessor shall be solely responsible for all other maintenance and repairs of the exterior (including the roof) and the mechanical systems of the Leased Premises.

SECTION 8. ALTERATIONS TO LEASED PREMISES

A. Lessor's Work.

- 1. As used herein the term, "Lessor's Work" shall mean completion of all work described in the Work Letter attached hereto as Exhibit "A", which work shall be performed at Lessor's sole cost and expense and in compliance with all applicable laws and grant or other funding requirements. All Lessor's Work shall be completed in substantial accordance with plans and specifications as provided to Lessee.
- 2. Lessor shall complete all of Lessor's Work on or before _____ (the "Target Date"). Lessor shall notify Lessee, in writing, of any substantial changes, omissions or additions to Lessor's Work. Any such written change order shall specify any extension of the Target Date required as a result of any such changes, omissions or additions.

B. Acceptance. Upon completion of Lessor's Work, Lessee shall have fifteen (15) days to give Lessor written notice of (i) Lessee's acceptance of Lessor's Work as complete (the "Acceptance Notice"), which shall include a punch list (the "Punchlist") of any items remaining to be completed, or (ii) any failure of Lessor to complete Lessor's Work in accordance with this

Section 8 (the "Objection Notice"). As used herein, the "Completion Date" shall be the earlier to occur of the date Lessor receives the Acceptance Notice or the expiration of such fifteen (15) day period if Lessee does not provide Lessor any Objection Notice during such period. If Lessee does not provide Lessor any notice during such fifteen (15) day period, Lessee shall be deemed to accept the Leased Premises.

C. Subject to the terms of this Section 8, Lessee may, at its own cost and expense, make alterations or renovations to the Leased Premises, in a manner consistent with all necessary federal, state, and local requirements, permits, and approvals. All plans for alterations or renovations are subject to timely review and approval of the Lessor's City Manager, or the City Manager's designee, which approval shall not be unreasonably withheld. The prior approval of the Lessor's City Manager, or the City Manager's designee, shall be required for alterations or renovations initiated by any Cohort Company (or any other sublessee) requests. The Lessor's failure to respond to approval under this section within thirty (30) days shall be deemed approval by the Lessor and consent to proceed.

D. The review and approval by the Lessor is solely for the purposes of this Lease Agreement and in no way constitutes or shall be deemed approval by or waiver of any review, permits or approvals required by the City of Roanoke in its regulatory capacity or the approval of any other regulatory entity. Any alteration or renovation shall not impair the safety of the Leased Premises, or any portion thereof, and shall be made according to all applicable laws, ordinances and regulations.

E. All alterations, additions, improvements, repairs, replacements, or fixtures made or replaced by Lessee or sublessees on the Leased Premises, including lighting, molding and any other article permanently affixed to the floor, wall or ceiling of the Leased Premises shall remain the property of the Lessor; risk of loss as to such personal property of the Lessor shall remain with the Lessor at all times during the Term.

F. Lessee shall not retain or permit a Cohort Company (or any other sublessee) to retain a contractor unless said contractor posts a Payment and Performance Bond in accordance with Virginia Code Section 2.2-4337. Lessee shall promptly pay or cause such sublessee to pay for all labor and materials used in constructing any improvements, alterations, or fixtures on the Leased Premises and shall do all things necessary to prevent the filing of any mechanics', materialmen, or other type of lien or claim against the Lessor or the Acceleration Center by, against, through, or under Lessee, Cohort Companies (or any other sublessees) or their contractors or subcontractors. Lessee and Cohort Companies (or any other sublessees) shall notify contractors that the Lessor's interest shall not be subject to any liens or claims for alterations, improvements or fixtures to the Acceleration Center by Lessee or Cohort Companies (or any other sublessees). The Lessor's interest shall not be subject to any liens or claims for alterations, improvements or fixtures to the Acceleration Center. If any such lien or claim is filed, Lessee shall use its best efforts to cause the same to be released within ninety (90) days of filing of the lien.

G. The parties agree to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Each party further agrees that

they do not and shall not during the performance of this Lease Agreement; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 9. INSURANCE

A. Requirement of insurance. Lessee, shall, during the life of this Lease Agreement, and any Cohort Company or other sublessee shall during the term of its sublease, obtain and maintain the insurance and bonds set forth below in this Lease Agreement. Any required insurance and bonds shall be effective prior to the commencement of this Lease Agreement or, in the case of a Cohort Company or other sublessee, prior to the commencement of its sublease agreement.

1. Commercial General Liability. Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Lease Agreement. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence and \$1,000,000 aggregate.
2. Workers' Compensation. Lessee shall obtain and maintain Workers' Compensation insurance covering all statutory obligations under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement. Minimum limits of liability for Employer's Liability shall be \$ 100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (Policy limit); and \$100,000 bodily injury by disease (each employee). With respect to the Workers' Compensation and Employer's Liability coverage, the insurance company providing such coverage shall waive rights of subrogation against the City, its officers, agents, employees and volunteers.
3. Automobile Liability. Lessee's Automobile Liability insurance shall be in the minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Lease Agreement or under a sublease agreement.
4. Umbrella Coverage. The insurance coverages and amounts set forth in this Section 9 may be met by an umbrella liability Policy following the form of the underlying primary coverage in a minimum amount of \$ 1,000,000. Should an umbrella liability insurance coverage Policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific Policy numbers indicated for the insurance providing the coverages required by subsections 1, 2 or 3, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished to the City.

B. Evidence of Insurance. All insurance shall meet the following requirements:

1. Lessee, the Cohort Company, or the other sublessee shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. The City shall be notified of any deductible greater than 10% of the policy limit and such deductible shall be subject to approval of the City, which shall not be unreasonably withheld. However, this deductible requirement shall not apply to pre-funded/fully-funded deductible programs upon proper documentation acceptable to the City's Risk Manager.
2. The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been provided to the City of Roanoke."
3. Except for Workers' Compensation coverage and Employer's Liability coverage, the required certificate or certificates of insurance shall name the City, its officers, agents, employees, and volunteers as additional insureds in connection with this Lease Agreement.
4. Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Lease Agreement shall be authorized to do business in the Commonwealth of Virginia.

C. During the Lease Term, Lessor shall maintain a self-insured program administered by the Office of Risk Management covering the Leased Premises.

SECTION 10. DAMAGE OR DESTRUCTION

In the event the Leased Premises or any part thereof is destroyed or so damaged by fire or other casualty as to make the Leased Premises totally or partially unfit for use, the Lessor shall have the option either to repair such damage or to terminate this Lease Agreement. The Lessor shall provide Lessee with notice of the Lessor's election within sixty (60) days after the occurrence of the casualty that caused the damage or destruction of all or a portion of the Leased Premises. All subleases shall include this provision.

SECTION 11. CONDEMNATION

In the event the whole of the Leased Premises is taken by eminent domain, this Lease Agreement and all subleases shall terminate as of the date title to the Leased Premises vests in the condemning authority. If a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease Agreement as of the date of transfer of title, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Lessee shall not be entitled to any portion of the award paid for the taking and the Lessor shall receive the full amount of such award. Lessee hereby expressly

waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the license or to the fee of the Leased Premises, shall belong to the Lessor, Lessee shall have the right to claim and recover from the condemning authority, but not from the City acting as Lessor, such compensation as may be separately awarded or recoverable by Lessee on account of any and all damage to Lessee's business and any costs or expenses incurred by Lessee in removing its equipment, personal property, and any relocation expenses.

SECTION 12. RISK OF LOSS

Notwithstanding anything herein to the contrary, Lessee shall bear the risk of any loss of, or damage to, the Leased Premises and/or any goods and items or personal property in the Leased Premises during the Lease Term. Also, notwithstanding anything herein to the contrary, City shall not be liable for any direct, consequential, incidental, or any other damages incurred by Lessee, any Cohort Company, or any other sublessees, due to any malfunction, theft, vandalism, acts of God (including, without limitation, lightning, wind, rain, flood, hail, fire or storms) lack of electricity, lack of air conditioning, lack of heat, or any other damages resulting from any reason whatever to the Leased Premises or arising out of or resulting from any use of the Leased Premises by the Lessee or its sublessees, users, or occupants.

SECTION 13. INDEMNIFICATION

A. Lessee agrees and binds itself, and shall require the same of any Cohort Company (or any other sublessee), to indemnify, keep and hold the Lessor, its officers, agents, employees and volunteers free and harmless from any and all claims, causes of action, damages, costs (including attorney's fees), or any liability on account of any injury or damage of any type to any third party persons or property growing out of or directly or indirectly resulting from any act or omission of Lessee arising from or related to the following items: (1) Lessee's use of the public ways or other areas of Lessor in connection with this Lease Agreement; (2) the operation, maintenance, repair or extension of the Leased Premises but only to the extent the operation, maintenance, repair or extension is the responsibility of Lessee hereunder; (3) the failure, refusal or neglect of Lessee to perform any duty imposed upon or assumed by Lessee or under this Lease Agreement; (4) any claim made against the Lessor made or arising out of any negligence or intentional misconduct of Lessee or a Cohort Company (or any other sublessee); or (5) any claim brought by a subtenant of Lessee against the Lessor for any reason arising from the use of the Leased Premises by such subtenant; provided however that Lessor shall be responsible for those portions of the claims, causes of action, damages, costs or any liability relating to or arising from Lessor's duties hereunder, negligence or intentional misconduct. In the event that any suit or proceeding shall be brought against the Lessor at law or in equity, either independently or jointly with Lessee or a Cohort Company (or any other sublessee) on account of anything set forth above, Lessee, upon notice given to it by the Lessor, will defend the Lessor in any such action or other proceeding, at the cost of Lessee; and in the event of any settlement or final judgment being awarded against the Lessor, either independently or jointly with Lessee, then Lessee will pay any such settlement or judgment or will comply with such decree, pay all reasonable costs and expenses of whatsoever nature and hold the Lessor, its officers, agents, employees and volunteers harmless therefrom. Lessor shall not enter into any settlement for any such action, proceeding or claim without the agreement of Lessee; failure to secure Lessee's

agreement to such settlement shall waive Lessor's right to indemnification of such settlement payment and all related and associated costs and expenses.

B. Virginia Western Foundation's liability to City arising from or related to this Lease Agreement and the Management Services Agreement for any claims or damages ("Claims") that are covered by the proceeds of Virginia Western Foundation's insurance programs, shall be limited to the actual insurance proceeds that are paid to or on behalf of Virginia Western Foundation. If the Claim is not covered by insurance required herein, the Foundation's liability shall be limited to \$125,000 or the amount of the Claim, whichever is less. If Virginia Western Foundation fails to maintain the insurance required herein, there shall be no cap on Virginia Western Foundation's liability for Claims.

SECTION 14. NONDISCRIMINATION

During the Lease Term, Lessee agrees as follows:

A. Lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Lessee. Lessee agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

B. Lessee, in all solicitations and advertisements for employees placed by or on behalf of Lessee, will state that Lessee is an equal employment opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. Lessee will include the provisions of the foregoing paragraphs A, B, and C in every contract, subcontract, or purchase order of over \$10,000, so that the provisions will be binding upon each contractor, subcontractor, or vendor.

SECTION 15. DRUG-FREE WORKPLACE

A. During the Lease Term, Lessee agrees to (i) provide a drug free workplace for Lessee employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Lessee that Lessee maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale,

distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Lease Agreement.

SECTION 16. FAITH BASED ORGANIZATIONS

Pursuant to Virginia Code Section 2.2-4343.1, all parties shall be advised that the Lessor does not discriminate against faith-based organizations.

SECTION 17. DEFAULT AND TERMINATION

A. Lessor may give the Lessee fifteen (15) days written notice of its intent to terminate this Lease Agreement because of a default in the performance of any covenant of this Lease Agreement or the Management Services Agreement. Events of default under the Lease Agreement shall include:

1. Non-payment of rental payments;
2. Non-payment of utilities, materials, or services which cause a lien upon the premises;
3. Destruction or damage to the premises caused by Lessee or the public for which Lessee does not provide reimbursement, except for normal wear and tear;
4. Use of premises for any unlawful act;
5. Failure to provide or pay for, as the case may be, required insurance coverage;
6. Any unapproved modification to premises which would cause the Leased Premises to violate building codes, fire codes, or other ordinances.

B. If the fifteen (15) days written notice of termination provided for in this section is given, and such default has not been cured by the defaulting party within fifteen (15) days after written notice is received; or if such default shall be of such nature that it cannot be cured completely within such fifteen (15) day period yet the breaching party has not promptly commenced within such fifteen (15) day period to proceed with reasonable diligence and in good faith to remedy such default, then at the expiration of such period this Lease Agreement shall terminate as completely as if that were the date herein definitely fixed for the expiration of the term of this Lease Agreement, and the Lessee shall then surrender the leased property to the Lessor.

C. Upon expiration or termination of this Lease Agreement, the Leased Premises shall be in good order as when received and/or including all agreed upon changes to the Leased Premises made in accordance with the terms of the Lease Agreement, ordinary wear and tear excepted, with any and all fixtures and equipment owned by the City and any equipment furnished by Virginia Western Foundation to replace similar equipment which may have become lost, damaged, or destroyed

SECTION 18. INCORPORATION OF MANAGEMENT SERVICES AGREEMENT

The Lessor and Lessee covenant and agree that all terms and conditions of the Management Services Agreement related to the Lease Premises are incorporated by reference into this Lease Agreement and are a material part of this Lease Agreement.

SECTION 19. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows:

If to City, to:

City of Roanoke
Attn: Director of Economic Development
117 Church Avenue S.W.
Roanoke, Virginia 24011
Fax no. (540) 853-1213

If to Virginia Western
Foundation, to:

Virginia Western Community College Educational
Foundation, Inc.
3093 Colonial Avenue, S. W.
Roanoke, Virginia 24015
Attn: Dr. Angela Falconetti

With a copy to:

Woods Rogers, PLC
10 S Jefferson St SW
Suite 1400
Attn: Nick Conte, Esq.

SECTION 20. MISCELLANEOUS

A. Cooperation. Each party agrees to cooperate with the other in executing any documents necessary to carry out the intent and purposes of this Lease Agreement.

B. Severability. If any term of this Lease Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease Agreement which shall continue in full force and effect. The parties intend that the provisions of this Lease Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

C. Authority. The persons who have executed this Lease Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacities as indicated.

D. Counterparts Allowed. This Lease Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

E. Compliance with Laws. Lessee and Lessor shall at all times comply with all applicable federal, state, and local laws, ordinances, and regulations, and obtain all required licenses required by the City of Roanoke and the Commonwealth of Virginia, and other regulatory agencies, necessary to operate Lessee's business.

F. Successors. The terms, conditions, provisions and undertakings of this Lease Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

G. Captions. The paragraph Captions and Headings in this Lease Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Lease Agreement.

H. Governing Law. By virtue of entering into this Lease Agreement, Lessee and the Lessor agree and submit themselves to a court of competent jurisdiction in the City of Roanoke, Virginia and further agree that this Lease Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes, and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws.

I. Waiver. Lessee agrees that the Lessor's waiver or failure to enforce or require performance of any term or condition of this Lease Agreement or the Lessor's waiver of any particular breach of this Lease Agreement by Lessee extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Lease Agreement or a waiver of any other breaches of this Lease Agreement by Lessee and does not bar the Lessor from requiring Lessee to comply with all the terms and conditions of the Lease Agreement and does not bar the Lessor from asserting any and all rights and/or remedies it has or might have against the Lessee under this Lease Agreement or by law.

J. Entire Agreement. This Lease Agreement, the Management Services Agreement, and its exhibits constitute the entire agreement and understanding of the parties, and supersede all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by both parties. Lessee acknowledges that it has participated in the drafting of this Lease Agreement. In the event of a dispute concerning any provision of this Lease Agreement, Lessee hereby acknowledges and agrees that it will not rely on any defense that any ambiguity in this Lease Agreement should be construed against the drafter of this Lease Agreement and Lessee waives that defense. Lessee agrees that the Lessor shall have no responsibility, duty or obligation to provide Lessee any services, property, or items that are not otherwise indicated in this Lease Agreement.

SIGNATURE PAGE TO FOLLOW

DRAFT DATE 10/12/2015

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by the following signatures by their authorized representatives.

ATTEST:

CITY OF ROANOKE, VIRGINIA, a Virginia
municipal corporation

City Clerk

By: _____
Christopher P. Morrill, City Manager

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

)
) to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Christopher P. Morrill, City Manager, of the City of Roanoke, Virginia, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____

(SEAL)

VIRGINIA WESTERN COMMUNITY
COLLEGE EDUCATIONAL
FOUNDATION, INC.

Witness: _____

By: _____
Printed Name _____
Title _____

COMMONWEALTH OF VIRGINIA)
CITY OF ROANOKE) to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, of the Virginia Western Community College Educational Foundation, Inc., a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____

(SEAL)

Approved as to Form:

Assistant City Attorney

Approved as to Execution

Assistant City Attorney

Authorized by Ordinance No.: _____

Management Services Agreement
Dated October ____, 2015 between City of Roanoke
And Virginia Western Foundation

EXHIBIT A
**TO LEASE BETWEEN CITY AND VIRGINIA WESTERN
FOUNDATION DATED _____, 2015**

LESSOR'S WORK LETTER

The City shall perform the following work on the Leased Premises:

1. Exterior painting as needed
2. Replace or repair exterior hardware (gutters, shutters, lights, etc.)
3. Selective interior demolition
4. Interior wall reconfiguration
5. Replace doors as needed
6. Renovate bathrooms
7. Adjustments to HVAC, electrical, and plumbing systems to accommodate new office configuration and bathroom renovations
8. Obtain all required permits
9. Any other renovations mutually agreed to by the City and Virginia Western Foundation or its designee during the design and renovation process described in Section 3 of this Management Services Agreement

A part of the City's above work is to ensure that the Leased Premises will be in compliance with all laws, ordinances and regulations of or relating to commercial property located in the City of Roanoke, VA, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), building codes and environmental laws, prior to the Foundation's occupancy of the Leased Premises. The total cost of all renovations including architect/engineering fees, permit fees, inspection services, and related administrative costs shall not exceed \$600,000.

DRAFT DATE 10/12/2015

Management Services Agreement
Dated October ____, 2015 between City of Roanoke
And Virginia Western Community College Educational Foundation, Inc.

EXHIBIT B

PERFORMANCE REPORT

ACCELERATOR PERFORMANCE REPORT (SAMPLE)

OCCUPANCY RATE

Current period	Prior period	YOY
----------------	--------------	-----

TENANTS

Business name	Description	Primary contact	No. of employees	Job title	Initial hire date
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ACCELERATOR PERFORMANCE REPORT (SAMPLE)

ACTIVITIES

Description	Date	Details
-------------	------	---------

ACCELERATOR PERFORMANCE REPORT (SAMPLE)

	Monthly	YTD	Budget	% Variance
<u>REVENUE*</u>				
Rent			\$ 99,495.00	
Grants			\$ 20,000.00	
TOTAL REVENUE	\$ -		\$ 119,495.00	
<u>EXPENSES*</u>				
Utilities				
Water & Sewer	\$ 425.00		\$ 5,100.00	
Electric & Gas	\$ 1,800.00		\$ 21,600.00	
Phone	\$ 175.00		\$ 2,100.00	
Internet	\$ 500.00		\$ 6,000.00	
Housekeeping (inc trash)	\$ 1,250.00		\$ 15,000.00	
Building expense/maintenance	\$ 650.00		\$ 7,800.00	
Security system	\$ 175.00		\$ 2,100.00	
Insurance - Commercial Liability	\$ 100.00		\$ 1,200.00	
Licenses, permits, misc taxes	\$ 150.00		\$ 1,800.00	
Misc	\$ 400.00		\$ 4,800.00	
Bookkeeping	\$ 800.00		\$ 9,600.00	
Legal/Accounting fees	\$ 700.00		\$ 8,400.00	
Marketing	\$ 1,000.00		\$ 12,000.00	
Meeting expense	\$ 400.00		\$ 4,800.00	
Property management expense	\$ 497.50		\$ 5,970.00	
Office supplies	\$ 400.00		\$ 4,800.00	
TOTAL EXPENSES	\$ 9,422.50		\$ 113,070.00	
CASH FLOW	\$ (9,422.50)		\$ 6,425.00	

*Based on 100 percent occupancy

DRAFT DATE 10/12/2015

Management Services Agreement
Dated October ____, 2015 between City of Roanoke
And Virginia Western Community College Educational Foundation, Inc.

EXHIBIT C

SAMPLE SUBLEASE AGREEMENT

DRAFT DATE 10/12/2015

SUBLEASE AGREEMENT

THIS SUBLEASE AGREEMENT (hereinafter referred to as the "Lease" or "Sublease") is effective as of the ____ day of _____, _____, by and between Virginia Western Community College Educational Foundation, Inc., a Virginia non-stock corporation ("Sublandlord"), and _____ ("Subtenant").

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the rents and covenants hereinafter set forth, Sublandlord hereby leases to Subtenant, and Subtenant hereby leases from Sublandlord, approximately ____ square feet of space in a building located at 709 South Jefferson Street, Roanoke, VA 24011, such premises being crosshatched on the site plan attached hereto as Exhibit A and made a part hereof, together with the non-exclusive right to use the Common Areas (as hereinafter defined) (collectively, the "Leased Premises").

TO HAVE AND TO HOLD the Leased Premises unto Subtenant, its permitted successors and assigns, for the term hereinafter provided, and upon the following terms and conditions, to which the parties mutually covenant and agree:

Section 1. TERM.

This Lease shall be for a term (the "Initial Term") commencing on the earlier of the date of delivery of the Leased Premises to Subtenant or _____, whichever first occurs, (the "Commencement Date"), and terminating at 11:59 PM local time on _____. In addition to the Initial Term, the Term of this Lease shall be automatically extended for _____ consecutive _____ year periods (each such period referred to as a "Renewal Period" and collectively as the "Renewal Periods") immediately following the Initial Term, unless Subtenant sends written notice to Sublandlord not later than the date that is three (3) months prior to the expiration of the initial or then current term hereof that Subtenant does not desire the Term to be so extended. During the Renewal Period(s) all the provisions, conditions and covenants of this Lease shall continue in full force and effect except that Rent (as hereinafter defined) payable for the Renewal Period(s) shall be as set forth in Section 3 of this Lease. References herein to the word "Term" in this Lease shall include the Initial Term and, from and after the date on which a Renewal Period commences, Renewal Period(s) by which the Term shall have been extended.

Section 2. USE OF LEASED PREMISES; COMMON AREAS.

Subtenant shall occupy and use the Leased Premises for and only for office space for the entity set forth above. The Lease Premises shall not be used for any other company or purpose other than the entrepreneurial and innovative purposes of the Subtenant. Subtenant will not use, permit or suffer the use of, the Leased Premises for any use which is in violation of any governmental law, rule or regulation, or which is or might constitute a nuisance, or which increases risk of peril to the building of which the Leased Premises is a part. The common areas (the "Common Areas") consist of all areas, if any, of the building of which the Leased Premises is a part that are provided by Sublandlord for common or joint use or benefit of Subtenant and other Subtenants of said building and/or their customers, employees, agents and/or invitees and all areas, if any, of the real property on which said building is located and other improvements thereon so provided by Sublandlord. All Common Areas shall be subject to the exclusive control and management of Sublandlord.

Section 3. RENT.

3.1 RENT AMOUNT. (a) As rent for the Leased Premises ("Rent"), Subtenant shall pay to Sublandlord, in advance on the first (1st) day of each calendar month, commencing on the Commencement Date and continuing throughout the Term the following monthly sums:

Initial Term	\$ ____ per square foot
Renewal Term	\$ ____ per square foot

If the Commencement Date shall be a day other than the first day of a month, the amount of Rent shall be prorated

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for the balance of such month on a per diem basis, and the prorated Rent for such month shall be due and payable on the Commencement Date. If the termination or expiration of the Term shall be a day other than the last day of a month, the amount of Rent shall be prorated for such month on a per diem basis. Any payment required to be made or cost required to be borne by Subtenant under any provision of this Lease, which accrues while this Lease is in effect, shall be additional rent.

3.2 WHERE AND HOW PAYABLE; LATE CHARGE. Subtenant shall pay the Rent, without demand, offset or deduction, to Sublandlord by delivering or mailing (postage prepaid) to Sublandlord at _____ or to such other address or in such other manner as Sublandlord from time to time specifies by written notice to Subtenant. Any payment made by Subtenant to Sublandlord on account of Rent may be credited by Sublandlord to the payment of any Rent then past due before being credited to Rent currently falling due. Any such payment which is less than the amount of Rent then due shall constitute a payment made on account thereof, the parties agreeing that Sublandlord's acceptance of such payment (whether or not with or accompanied by an endorsement or statement that such lesser amount or Sublandlord's acceptance thereof constitutes payment in full of the amount of Rent then due) shall not alter or impair Sublandlord's rights hereunder to be paid all of such amount then due. In the event any installment of Rent is not paid within seven (7) days after it becomes due, a late fee of five percent (5%) of the past due installment may be charged to Subtenant by Sublandlord.

3.3 COMMON AREA OPERATING COSTS. Commencing on the Commencement Date and continuing throughout the Term on the first of each month Subtenant will pay Sublandlord, as additional rent, one-twelfth (1/12) of Subtenant's proportionate share of the annual Common Area Operating Costs (as hereinafter defined). "Subtenant's proportionate share" is a fraction, the numerator of which is the gross leasable area of the Leased Premises and the denominator of which is the gross leasable area of the building of which the Leased Premises is a part. The Common Area Operating Costs shall be estimated by Sublandlord on an annual basis for each calendar year ending on December 31. Should the actual Common Area Operating Costs be less than each Subtenant paid, the amount overpaid by Subtenant will be credited towards Subtenant's share of Common Area Operating Costs for the first month of the next year or, if the Term is expiring, a refund shall be made provided no other charges are outstanding by Subtenant. If Common Area Operating Costs are more than Sublandlord's estimate, Subtenant shall pay such excess within thirty (30) days of receiving a statement thereof from Sublandlord. Failure to pay such costs shall be a default under this Lease. "Common Area Operating Costs" means all costs and expenses of every kind paid or incurred by Sublandlord (including reasonable reserves) in operating, managing, equipping, lighting, repairing, replacing, landscaping and maintaining all Common Areas. Such costs and expenses shall include, but not be limited to, costs of all roof and other maintenance, repairs and replacements performed by Sublandlord; any public liability, rent interruption, fire insurance, extended coverage and all other perils coverage purchased by Sublandlord, plus all endorsements and other insurance coverages deemed reasonable by Sublandlord; fees for required licenses and permits; supplies; and reasonable depreciation of equipment used in the operation or maintenance of the Common Areas. Nothing in this paragraph is intended to impose any obligation upon Sublandlord to purchase any insurance coverage or perform any maintenance except as otherwise expressly required herein.

Section 4. ASSIGNMENT AND SUBLETTING. Subtenant shall not assign this Lease, or sublet any or all of the Leased Premises, or permit any other person or entity to occupy any or all of the Leased Premises, without on each occasion first obtaining Sublandlord's prior written consent thereto, which consent may be withheld in Sublandlord's absolute discretion. For purposes of the foregoing provisions of this subsection, a transfer, by any person or persons controlling Subtenant on the date hereof, of such control to a person or persons not controlling Subtenant on the date hereof, shall be deemed to be an assignment of this Lease. No such action taken with or without Sublandlord's consent shall in any way relieve or release Subtenant from liability for the timely performance of all of Subtenant's obligations hereunder unless a written release is signed by Sublandlord. In no event shall this Lease be assignable by operation of any law, and Subtenant's rights hereunder may not become, and shall not be listed by Subtenant as, an asset under any bankruptcy, insolvency or reorganization proceedings. Subtenant is not, and may not become, and shall never represent itself to be an agent of Sublandlord, and Subtenant expressly recognizes that Sublandlord's title is paramount, and that it can do nothing to affect or impair Sublandlord's title. Assignees or subleases shall be bound by all provisions of this Lease.

Section 5. CONDITION OF LEASED PREMISES. Subtenant has examined and knows the present condition of the Leased Premises. The Leased Premises is provided to Subtenant in its current "AS IS" condition. Sublandlord makes no representations or warranties as to the condition of the Leased Premises.

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Section 6. UTILITIES. Sublandlord shall promptly pay all fuel, water, gas, electricity, sewerage, telephone and other utility charges incurred for the Leased Premises, as the same become due, and promptly make all required deposits for meters and utilities service. Sublandlord shall not be liable to Subtenant for any interruption or failure in the supply of any utility service to the Leased Premises, regardless of the reason for the interruption or failure.

Section 7. INSURANCE AND INDEMNIFICATION.

7.1 (a) Subtenant shall indemnify Sublandlord and hold Sublandlord harmless from and against any loss, cost, damage or liability for personal injury or property damage arising out of or resulting from Subtenant's occupancy or use of the Leased Premises and from any event or occurrence taking place on or about the Leased Premises during the Term of this Lease. This indemnification shall survive the termination of this Lease.

(b) Pursuant to the requirements of the Service Agreement and the Master Lease, as these terms are described and defined in Section 23 of this Sublease, Subtenant shall indemnify the City of Roanoke, Virginia, and hold the City of Roanoke, Virginia, its agents, employees, and volunteers free and harmless from any and all claims, causes of action, damages, costs (including attorneys' fees), for personal injury or property damage arising out of or resulting from Subtenant's occupancy or use of the Leased Premises and from any event or occurrence taking place on or about the Leased Premises during the Term of this Lease. This indemnification shall survive the termination of this Lease.

7.2 Subtenant, shall, during the Term of this Lease, obtain and maintain the insurance and bonds set forth below. Any required insurance and bonds shall be effective prior to the commencement of the Term.

7.3 Commercial General Liability. Subtenant shall obtain Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Lease. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence and \$1,000,000 aggregate.

7.4 Workers' Compensation. Subtenant shall obtain and maintain Workers' Compensation insurance covering all statutory obligations under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement. Minimum limits of liability for Employer's Liability shall be \$ 100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (Policy limit); and \$100,000 bodily injury by disease (each employee). With respect to the Workers' Compensation and Employer's Liability coverage, the insurance company providing such coverage shall waive rights of subrogation against the Sublandlord and the City of Roanoke, its officers, agents, employees and volunteers.

7.5 Automobile Liability. Subtenant's Automobile Liability insurance shall be in the minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work.

7.6 Umbrella Coverage. The insurance coverages and amounts set forth in this Section 7 may be met by an umbrella liability Policy following the form of the underlying primary coverage in a minimum amount of \$ 1,000,000. Should an umbrella liability insurance coverage Policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific Policy numbers indicated for the insurance providing the coverages required by subsections 1, 2 or 3, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished to the Sublandlord.

7.7 Evidence of Insurance. All insurance shall meet the following requirements:

(a) Subtenant shall furnish the Sublandlord a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. The Sublandlord shall be notified of any deductible greater than 10% of the policy limit and such deductible shall be subject to approval of the Sublandlord, which shall not be unreasonably withheld.

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(b) The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been provided to the Virginia Western Community College Educational Foundation, Inc."

(c) Except for Workers' Compensation coverage and Employer's Liability coverage, the required certificate or certificates of insurance shall name the Sublandlord, its officers, agents, employees, and volunteers as additional insureds.

7.8 Insurance coverage shall be in a form and with an insurance company approved by the Sublandlord which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Lease shall be authorized to do business in the Commonwealth of Virginia.

7.9 **PERSONAL PROPERTY IS SUBTENANT'S RISK.** All personal property in the Leased Premises shall be and remain at Subtenant's sole risk, and Sublandlord shall not be liable for any damage to nor loss of such personal property arising from any acts of negligence of any other persons, nor from the leaking of the roof, the bursting, leaking or overflowing of water, sewer or steam pipes, the heating or plumbing fixtures, electric wires or fixtures, or from any other cause whatsoever. The parties hereto mutually agree that Subtenant shall have no right to claim any compensation or reimbursement for any damages suffered by, or alleged to have been suffered or sustained by, any of Subtenant's property while on the Leased Premises. Subtenant shall maintain casualty insurance on Subtenant's personal property on the Leased Premises, provide Sublandlord with evidence of such insurance policy prior to initial occupancy of the Leased Premises and provide Sublandlord with evidence that such policy has been renewed at least thirty (30) days prior to each expiration date of the policy. Subtenant agrees not to store on the Leased Premises any property which would pose a danger to persons or the Leased Premises or would constitute a violation of any law.

Section 8. REAL ESTATE TAXES. Subtenant shall timely pay any taxes, leasehold taxes, or other charges in connection with this Sublease. Subtenant shall reimburse Sublandlord for any and all taxes, fees or costs incurred and/or paid on its behalf.

Section 9. REPAIRS AND ALTERATIONS.

9.1 **REPAIRS.** Subtenant shall, at Subtenant's expense, during the Term keep and maintain the entire Leased Premises in good repair and condition and shall make at Subtenant's sole expense such replacements, restoration, renewals or repairs, in quality equivalent or better than the original work replaced, as may be required to so maintain the same, ordinary wear and tear only excepted. Nothing herein shall be construed as requiring Sublandlord to perform any repair or maintenance to the Leased Premises. Subtenant shall, at its expense, at all times keep the Leased Premises in a neat, orderly, sanitary and safe condition.

9.2 **ALTERATIONS.** Subtenant shall not make any alterations of, additions to or changes in the Leased Premises without the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole discretion, and all alterations, changes, and improvements, by whomsoever made, shall immediately become the property of Sublandlord. Any work performed by Subtenant shall be done in a good and workmanlike manner. Subtenant shall not at any time permit any work to be performed on the Leased Premises except by duly licensed contractors, which must carry general public liability insurance, certificates of which shall be furnished to Sublandlord. At no time may Subtenant do any work that results in a claim or lien against Sublandlord or the Leased Premises, and, if required by Sublandlord on termination of the Lease or vacation of the Leased Premises by Subtenant, Subtenant shall restore, at Subtenant's expense the Leased Premises to the same condition as existed at the commencement of the Term, ordinary wear and tear excepted.

Section 10. DEFAULTS BY SUBTENANT; TERMINATION

10.1 **DEFINITION.** As used in this Lease each of the following events shall constitute an "Event of Default":

(a) if Subtenant (i) fails to pay the Rent or any other sum which Subtenant is obligated to pay under this Lease, when and as it is due and payable hereunder and without demand therefore, and such failure continues for seven (7) days or more after notice thereof from Sublandlord, or (ii) in any respect violates any of the other terms, conditions or covenants set forth in this Lease and such failure continues for thirty (30) days or more after notice thereof from Sublandlord; or

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(b) if Subtenant (i) applies for or consents to the appointment of a receiver, trustee or liquidator of Subtenant or of all or a substantial part of its assets, (ii) files a voluntary petition in bankruptcy or admits in writing its inability to pay its debts as they come due, (iii) makes an assignment for the benefit of its creditors, (iv) files a petition or an answer seeking a reorganization or an arrangement with creditors, or seeks to take advantage of any insolvency law, (v) performs any other act of bankruptcy, or (vi) there otherwise commences with respect to Subtenant or any of its assets any proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment, receivership or similar law, and such order, judgment, decree or proceeding continues unstayed for more than sixty (60) consecutive days after the expiration of any stay thereof.

10.2 SUBLANDLORD'S RIGHTS UPON EVENT OF DEFAULT. Upon the occurrence of any Event of Default, Sublandlord may: (a) declare the entire balance of the Rent for the remainder of the Term to be due and payable, and collect such balance in any manner not inconsistent with applicable law; (b) with or without terminating this Lease and/or with or without reentering and obtaining possession of the Leased Premises relet any or all of the Leased Premises for Subtenant's account for any or all of the remainder of the Term as hereinabove defined, or for a period exceeding such remainder, in which event Subtenant shall pay to Sublandlord any deficiency in the Rent resulting, with respect to such remainder, from such reletting, as well as the cost to Sublandlord of any attorneys' fees or of any repairs or other action (including those taken in exercising Sublandlord's rights under any provision of this Lease) taken by Sublandlord on account of such Event of Default; (c) terminate this Lease and the then unexpired term hereof, except as to the rights and remedies of Sublandlord upon termination as provided herein; (d) cure such Event of Default, in which case Subtenant shall reimburse Sublandlord for all expenses incurred by Sublandlord in doing so, plus interest thereon at the rate of eight percent (8%) per annum, which expenses and interest shall be additional rent and shall be payable by Subtenant immediately upon demand therefore by Sublandlord; and/or (f) pursue any combination of such remedies and/or any other remedy available to Sublandlord on account of such Event of Default under applicable law or at equity.

Section 11. HOLDING OVER. Subtenant agrees at the termination of this Lease, by lapse of time or otherwise, to forthwith leave, surrender, and yield up the Leased Premises and a holding over or continuance in the occupancy of the Leased Premises shall not work an extension of this Lease but in any and all such cases Subtenant shall be a Subtenant at will at the option of Sublandlord, subject to removal by Sublandlord by summary process and proceedings, it being provided further than an acceptance of Rent by Sublandlord during such holding over period shall operate to create a tenancy from month to month only terminable upon thirty days' notice and in such case all provisions of this Lease not inconsistent with a tenancy from month to month shall remain in force except that the Rent shall be 175% of the then current Rent.

Section 12. SUBLANDLORD'S RIGHT OF ENTRY. Sublandlord and its agents shall be entitled to enter the Leased Premises at any reasonable time to allow inspection by prospective lenders, purchasers, and Subtenants, to make such repairs, alterations or changes as Sublandlord deems necessary, and for any other purpose relating to the operation or maintenance of the Property.

Section 13. CASUALTY DAMAGE. In the event the Leased Premises or any part thereof is destroyed or so damaged by fire or other casualty as to make the Leased Premises totally or partially unfit for use, the Sublandlord shall have the option either to repair such damage or terminate this Sublease Agreement. The Sublandlord shall provide Subtenant with notice of the Sublandlord's election within sixty (60) days after the occurrence of the casualty that caused the damage or destruction of all or a portion of the Leased Premises.

Section 14. CONDEMNATION.

In the event the whole of the Leased Premises is taken by eminent domain, this Sublease Agreement shall terminate as of the date title to the Leased Premises vests in the condemning authority. If a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease as of the date of transfer of title, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Subtenant shall not be entitled to any portion of the award paid for the taking and the Sublandlord shall receive the full amount of such award. Subtenant hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the license or to the fee of the Leased Premises, shall belong to the Sublandlord, Subtenant shall have the right to claim and recover from the condemning authority, but not from the

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Sublandlord or the City of Roanoke, Virginia, such compensation as may be separately awarded or recoverable by Subtenant on account of any and all damage to Subtenant's business and any costs or expenses incurred by Subtenant in removing its equipment, personal property, and any relocation expenses.

Section 15. MECHANICS' AND MATERIALMEN'S LIENS. Subtenant shall bond, remove or have removed any mechanic's, materialmen's or other lien filed or claimed against the Leased Premises by reason of labor or materials provided for or at the request of Subtenant or any of its contractors or subcontractors, or otherwise arising out of Subtenant's use or occupancy of the Leased Premises, and indemnify and hold harmless Sublandlord against and from any and all liability or expense (including, by way of example rather than of limitation, that of reasonable attorneys' fees) incurred by Sublandlord on account of any such lien or claim.

Section 16. QUIET ENJOYMENT; SURRENDER; FINAL INSPECTION. Sublandlord hereby covenants that Subtenant, on paying the Rent and performing the other covenants set forth herein, shall peaceably and quietly hold and enjoy the Leased Premises throughout the Term, without interference from Sublandlord subject nevertheless to the terms of this Lease and to any mortgages, agreements and encumbrances to which this Lease is or may be subordinated. Upon the expiration or earlier termination of the Term, Subtenant shall surrender the Leased Premises and all keys thereto to Sublandlord in good order and repair (casualty damages and ordinary wear and tear excepted) and broom clean. Any and all improvements, repairs, alterations and all other property attached to, used in connection with or otherwise installed upon the Leased Premises (i) shall become Sublandlord's property without payment therefore by Sublandlord at the expiration of the Term, and (ii) shall be surrendered to Sublandlord upon the expiration or earlier termination of the Term, except that any machinery, equipment or fixtures installed by Subtenant and used in the conduct of Subtenant's trade or business (rather than to serve the Leased Premises) shall remain Subtenant's property and shall be removed by Subtenant at the expiration or earlier termination of the Term, and Subtenant shall promptly thereafter fully restore any of the Leased Premises damaged by such installation or removal. At Sublandlord's option, Subtenant shall meet with Sublandlord or Sublandlord's agent for Sublandlord to conduct a final inspection of the Leased Premises on the last day of the Term or on such other date as is mutually agreed by Sublandlord and Subtenant.

Section 17. SECURITY DEPOSIT. Subtenant, concurrently with the execution of this Lease, has deposited with Sublandlord a security deposit in the amount of \$_____ (the "Security Deposit") as security for the performance of Subtenant's obligations hereunder. If Subtenant defaults with respect to any provision of this Lease including, but not limited to, the provisions relating to the payment of any Rent, Sublandlord, in its sole discretion, may elect to use, apply or retain all or any part of the Security Deposit for the payment of any Rent or any other sum due to Sublandlord hereunder or for the payment of any other loss or damage which Sublandlord may suffer by reason of Subtenant's default continuing beyond any cure period. If any portion of the Security Deposit is so used or applied, Subtenant shall, within thirty (30) days after written demand therefore, deposit with Sublandlord an amount sufficient to restore the Security Deposit to its original amount and Subtenant's failure to do so shall be a material breach of this Lease. Unless required by applicable law, Sublandlord shall not be required to keep the Security Deposit separate from its general funds, and Subtenant shall not be entitled to interest on the Security Deposit. If Subtenant shall fully and faithfully perform each provision of this Lease to be performed by it, the Security Deposit or any unused balance thereof shall be returned to Subtenant within thirty (30) days following Lease expiration, Subtenant's vacating the Leased Premises and removing all of its property.

Section 18. NONDISCRIMINATION

During the Lease Term, Subtenant agrees as follows:

18.1 Subtenant will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Subtenant. Subtenant agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

18.2 Subtenant, in all solicitations and advertisements for employees placed by or on behalf of Subtenant, will state that Subtenant is an equal employment opportunity employer.

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18.3 Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

18.4 Subtenant will include the provisions of the foregoing paragraphs in this Section 18 in every contract, subcontract, or purchase order of over \$10,000, so that the provisions will be binding upon each contractor, subcontractor, or vendor.

Section 19. DRUG-FREE WORKPLACE

19.1 During the Lease Term, Subtenant agrees to (i) provide a drug free workplace for Subtenant employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Subtenant that Subtenant maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

19.2 For the purposes of this section, "drug free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Lease Agreement.

Section 20. FAITH BASED ORGANIZATIONS

Pursuant to Virginia Code Section 2.2-4343.1, all parties shall be advised that the Sublandlord does not discriminate against faith-based organizations.

Section 21. NOTICES. Any notice, demand, consent, approval, request or other communication or document to be provided hereunder to a party hereto shall be in writing addressed to Subtenant at the Leased Premises and to Sublandlord at _____, and sent by certified or registered mail in the United States mail, postage prepaid, return receipt requested or by nationally recognized courier. Either party may change its notice address from time to time by giving notice of such change to the other in the manner set forth in this Section. Any such notice shall be considered given on the date of such deposit with such overnight courier for next business day delivery or deposit in the United States mail, but the time period in which to respond to such notice shall commence on the date of courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice.

Section 22. GENERAL.

22.1 COMPLETE AND FINAL UNDERSTANDING; AMENDMENT. This Lease represents the complete understanding between the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between the parties hereto as to the same. This Lease may be amended by and only by an instrument executed and delivered by both Sublandlord and Subtenant.

22.2 APPLICABLE LAW; WAIVER; TIME OF ESSENCE. This Lease shall be given effect and construed by application of the laws of the Commonwealth of Virginia. Sublandlord shall not be deemed to have waived the exercise of any right which it holds hereunder unless such waiver is made expressly and in writing (and no delay or omission by Sublandlord in exercising any such right shall be deemed to be a waiver of the future exercise thereof). No such waiver made with respect to any instance involving the exercise of any such right shall be deemed to be a waiver with respect any other such instance, or any other such right. Time shall be of the essence in this Lease.

22.3 PARTIAL INVALIDITY; NO JOINT VENTURE. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the

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application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law. The relationship of the parties is that of Sublandlord and Subtenant only, and nothing in this Lease shall be construed as creating a partnership, joint venture, principal, agent or any other relationship. Except as expressly otherwise provided herein, neither party shall have any right or power to create any expense or liability chargeable to the other party.

22.4 BROKERS; ATTORNEYS' FEES. Sublandlord and Subtenant, respectively, represent and warrant to the other that it has not dealt with any real estate broker or other person who may claim a fee or commission in connection with this Lease, and each party agrees to indemnify and hold the other harmless against any such claim made by any other broker claiming by, through or under such party. Subtenant's obligations hereunder shall survive the expiration or earlier termination of this Lease. In the event that any legal matter, dispute, action or proceeding exists or is commenced by or between Sublandlord and Subtenant under this Lease, the prevailing party shall be reimbursed reasonable attorneys' fees and court costs in such matter.

SECTION 23. MASTER LEASE. Subtenant acknowledges and agrees that this Lease and the Leased Premises are subject to a Lease Agreement dated _____, 2015, by and between Sublandlord, as Tenant, and the City of Roanoke, Virginia, as Landlord (the "Master Lease"). Subtenant further acknowledges and agrees that this Lease, Leased Premises, and the Master Lease are subject to a Master Services Agreement by and between Sublandlord and the City of Roanoke, Virginia dated _____, 2015 (the "Services Agreement"). All terms and conditions of the Master Lease are incorporated herein by reference. In the event any term or condition of this Lease conflicts with the Master Lease, the Master Lease shall control. Subtenant specifically acknowledges and agrees that this Lease shall automatically terminate upon the termination or expiration of the Master Lease or the Service Agreement.

[Signatures appear on the following page(s).]

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WITNESS the following signatures and seals effective as of the day and year first above written.

SUBLANDLORD:

VIRGINIA WESTERN COMMUNITY COLLEGE
EDUCATIONAL FOUNDATION, INC.

By:
Its:

SUBTENANT:

By:
Its:

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Exhibit A
Leased Premises

LEASE AGREEMENT

This lease made this ____ day of October, 2015 ("Lease Agreement") by and between **CITY OF ROANOKE, VIRGINIA**, a Virginia municipal corporation, hereinafter called Lessor or the City, and the **VIRGINIA WESTERN COMMUNITY COLLEGE EDUCATIONAL FOUNDATION, INC.**, a Virginia non-stock corporation, hereinafter called Lessee.

RECITALS:

WHEREAS, the City and Lessee have entered into a Management Services Agreement dated October ___, 2015 (the "Management Services Agreement"), in which the Lessee has agreed to certain terms and conditions to manage and operate, or to have its designee manage and operate, a technology acceleration center ("Acceleration Center") focused primarily on connecting early stage companies to peers, mentors, and investors;

WHEREAS, the City desires to lease to Lessee that certain property, as described below, as renovated and upgraded, to manage and operate, or to have its designee manage and operate, the Acceleration Center at the leased premises and allow Lessee to enter into sublease agreements with third parties according to the terms contained herein; and

WHEREAS, the City desires to lease the Leased Premises to Lessee for such purposes as defined herein, upon the terms and conditions stated below.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and the Recitals set forth above which are incorporated herein and made a material part of this Lease, and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged by the City and Lessee, the City and Lessee agree as follows:

SECTION 1. LEASED PREMISES

Lessor hereby leases to Lessee, and Lessee accepts such lease, of all that real property located in Roanoke, Virginia, designated as Roanoke Official Tax Map No. 1020510, located at 709 South Jefferson Street, Roanoke, VA, 24011, consisting of 0.1671 acres, more or less, together with a building and improvements thereon (the "Property"), as such Property has been, and will be, renovated and improved in accordance with the Management Services Agreement and terms and conditions contained herein ("Leased Premises").

SECTION 2. CONDITION OF PREMISES

A. Lessor represents and warrants to Lessee that, as of the commencement of the Lease Term, the Leased Premises will be in compliance with all laws, ordinances and regulations

of or relating to commercial property located in the City of Roanoke, VA, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), building codes and environmental laws. Lessee may enter into a sublease or subcontract agreement with Virginia Western Community College (the "College") or some other third party such that the College or designated third party shall be responsible for the day-to-day management of the Acceleration Center and the negotiation of one or more subleases with third parties, including but not limited to Cohort Companies (as defined in the Management Services Agreement). All subleases, other than any sublease between the Lessee and the College, shall be in a form with terms and conditions at the sole discretion of Lessee to be included as Exhibit C attached to the Management Services Agreement; and, provided further, that no such terms and conditions of any sublease shall conflict with the terms and conditions contained herein or in the Management Services Agreement. The form of any sublease between Lessee and the College shall be approved by Lessor, such approval not to be unreasonably withheld. Lessee acknowledges and agrees that at all times during the Lease Term (as defined in Section 3 below) two-thirds of the Leased Premises (or, 2 floors) shall be used by Lessee, the College, performing activities for the Accelerator Program, and/or Cohort Companies for the Accelerator Program; one-third of the Leased Premises may be used and/or subleased for any other purpose in accordance with all laws and this Lease Agreement

B. Lessee accepts the Leased Premises in their "AS IS" condition as of the commencement of the Lease Term. As of the date of the commencement of the Lease Term, all utility services will be adequate for the Lessee's intended use.

SECTION 3. LEASE TERM

A. The term of the Lease shall be a term of five (5) years from the date Lessee first occupies the Leased Premises, after renovations to the Property are substantially completed and a permanent certificate of occupancy is issued by the City of Roanoke Building, Planning and Development Department, and ending five (5) years after such date, subject to the termination rights of the parties as set forth in this Lease Agreement ("Lease Term"). Upon establishment of the date of occupation, the City and Lessee shall execute an estoppel letter that establishes (i) the Lease Term as set forth in this Lease Agreement; and (ii) the acceptance of the condition of the Leased Premises by Lessee.

B. Lessee shall operate the Acceleration Center and the Leased Premises for the first full year of the Term. At any time after the first full year of the Term, Lessee may notify the City of Lessee's desire to renegotiate the terms of the Lease. After ninety (90) days following the receipt of the such notice, if the City and Lessee have not agreed upon the renegotiated terms of the Lease, Lessee may terminate the Management Services Agreement and the Lease with six (6) months written notice to the City.

SECTION 4. RENT AMOUNT

In consideration of its Lease of the Property, Lessee shall pay to the City the sum of one dollar (\$1.00) per year, payable beginning on or before the beginning of the Lease Term and on each anniversary date of the beginning of the Lease Term. The City acknowledges and agrees that the rental amount set forth in this Section 4 is adequate consideration for this Lease

Agreement and use of the Leased Premises by Virginia Western Foundation for the Lease Term, and the City hereby waives any and all defenses and arguments of or relating to inadequate consideration.

SECTION 5. ADDITIONAL RENT: TAXES AND OTHER CHARGES

A. In addition to payment of the rent as set forth above, Lessee shall timely pay any taxes, leasehold taxes, or charges in connection with this Lease Agreement or under any sublease, or other use and occupancy agreement that Lessee, Cohort Companies, or other sublessees or occupants may be required by law or regulation to pay. The parties acknowledge and agree that Lessee is a 501(c)(3) entity which exempts Lessee from certain taxes. Exemption from any tax, in accordance with laws and at the discretion of Lessee, shall relieve Lessee from its duty under this Section.

B. Lessee shall reimburse the City for all stormwater utility fees assessed by the City of Roanoke for the Leased Premises pursuant to Chapter 11.5 Code of the City of Roanoke (1979), as amended.

SECTION 6. RIGHT OF ENTRY

The Lessor shall have the right to enter the Leased Premises upon twenty-four (24) hours advance written notice (except in the event of an emergency, in which case Lessor shall have the right to immediate entry) for the purpose of making necessary repairs or inspections to ensure that the conditions of this Lease Agreement are being fulfilled. Any contractual deficiencies in the conditions of the Leased Premises will be brought to Lessee's attention. Lessee will attempt to rectify said deficiencies within ten (10) working days or any other mutually agreed upon time frame. If Lessee refuses or fails to rectify the deficiencies, the Lessor may terminate this Lease Agreement as provided in Section 17 of this Lease Agreement.

SECTION 7. MAINTENANCE OF LEASED PREMISES

A. Lessee will maintain the Leased Premises, including the interior of the building and all contents therein, in good repair at Lessee's sole cost and expense. Lessee's maintenance responsibilities include:

1. Custodial and basic day to day maintenance;
2. All costs for utility use (power, telecommunication, internet, water, sewer, garbage, etc.);
3. Routine and reasonable floor and carpet care at a minimum of twice a year;
4. Interior window cleaning;
5. Providing, cleaning and maintaining floor mats;
6. Providing pest control services;
7. Electrical system maintenance to include outlets, breakers, fuse boxes, etc. that are considered minor and not a major electrical system problem;

8. Plumbing to include repair of any small leaks and stoppages;
9. Replacement of fluorescent tubes and/or bulbs in light fixtures;
10. Snow and ice removal from parking lot and sidewalks; and
11. Elevator inspection and maintenance.

B. Lessee shall also be responsible for other routine and regular repairs to the building. Routine and regular repairs are those repairs with no one expense exceeding \$500, which may include but are not limited to:

1. Minor electrical work;
2. Plumbing repairs;
3. Painting; and
4. Glass repair.

C. Lessor shall be solely responsible for all other maintenance and repairs of the exterior (including the roof) and the mechanical systems of the Leased Premises.

SECTION 8. ALTERATIONS TO LEASED PREMISES

A. Lessor's Work.

1. As used herein the term, "Lessor's Work" shall mean completion of all work described in the Work Letter attached hereto as Exhibit "A", which work shall be performed at Lessor's sole cost and expense and in compliance with all applicable laws and grant or other funding requirements. All Lessor's Work shall be completed in substantial accordance with plans and specifications as provided to Lessee.
2. Lessor shall complete all of Lessor's Work on or before _____ (the "Target Date"). Lessor shall notify Lessee, in writing, of any substantial changes, omissions or additions to Lessor's Work. Any such written change order shall specify any extension of the Target Date required as a result of any such changes, omissions or additions.

B. Acceptance. Upon completion of Lessor's Work, Lessee shall have fifteen (15) days to give Lessor written notice of (i) Lessee's acceptance of Lessor's Work as complete (the "Acceptance Notice"), which shall include a punch list (the "Punchlist") of any items remaining to be completed, or (ii) any failure of Lessor to complete Lessor's Work in accordance with this Section 8 (the "Objection Notice"). As used herein, the "Completion Date" shall be the earlier to occur of the date Lessor receives the Acceptance Notice or the expiration of such fifteen (15) day period if Lessee does not provide Lessor any Objection Notice during such period. If Lessee does not provide Lessor any notice during such fifteen (15) day period, Lessee shall be deemed to accept the Leased Premises.

C. Subject to the terms of this Section 8, Lessee may, at its own cost and expense, make alterations or renovations to the Leased Premises, in a manner consistent with all necessary federal, state, and local requirements, permits, and approvals. All plans for alterations or renovations are subject to timely review and approval of the Lessor's City Manager, or the City Manager's designee, which approval shall not be unreasonably withheld. The prior approval of the Lessor's City Manager, or the City Manager's designee, shall be required for alterations or renovations initiated by any Cohort Company (or any other sublessee) requests. The Lessor's failure to respond to approval under this section within thirty (30) days shall be deemed approval by the Lessor and consent to proceed.

D. The review and approval by the Lessor is solely for the purposes of this Lease Agreement and in no way constitutes or shall be deemed approval by or waiver of any review, permits or approvals required by the City of Roanoke in its regulatory capacity or the approval of any other regulatory entity. Any alteration or renovation shall not impair the safety of the Leased Premises, or any portion thereof, and shall be made according to all applicable laws, ordinances and regulations.

E. All alterations, additions, improvements, repairs, replacements, or fixtures made or replaced by Lessee or sublessees on the Leased Premises, including lighting, molding and any other article permanently affixed to the floor, wall or ceiling of the Leased Premises shall remain the property of the Lessor; risk of loss as to such personal property of the Lessor shall remain with the Lessor at all times during the Term.

F. Lessee shall not retain or permit a Cohort Company (or any other sublessee) to retain a contractor unless said contractor posts a Payment and Performance Bond in accordance with Virginia Code Section 2.2-4337. Lessee shall promptly pay or cause such sublessee to pay for all labor and materials used in constructing any improvements, alterations, or fixtures on the Leased Premises and shall do all things necessary to prevent the filing of any mechanics', materialmen, or other type of lien or claim against the Lessor or the Acceleration Center by, against, through, or under Lessee, Cohort Companies (or any other sublessees) or their contractors or subcontractors. Lessee and Cohort Companies (or any other sublessees) shall notify contractors that the Lessor's interest shall not be subject to any liens or claims for alterations, improvements or fixtures to the Acceleration Center by Lessee or Cohort Companies (or any other sublessees). The Lessor's interest shall not be subject to any liens or claims for alterations, improvements or fixtures to the Acceleration Center. If any such lien or claim is filed, Lessee shall use its best efforts to cause the same to be released within ninety (90) days of filing of the lien.

G. The parties agree to and will comply with all applicable federal, state, and local laws, ordinances, and regulations, including, but not limited to all applicable licensing requirements, environmental regulations, and OSHA regulations. Each party further agrees that they do not and shall not during the performance of this Lease Agreement; knowingly employ an unauthorized alien as defined in the Federal Immigration Reform & Control Act of 1986.

SECTION 9. INSURANCE

A. Requirement of insurance. Lessee, shall, during the life of this Lease Agreement, and any Cohort Company or other sublessee shall during the term of its sublease, obtain and maintain the insurance and bonds set forth below in this Lease Agreement. Any required insurance and bonds shall be effective prior to the commencement of this Lease Agreement or, in the case of a Cohort Company or other sublessee, prior to the commencement of its sublease agreement.

1. Commercial General Liability. Commercial General Liability insurance coverage on an occurrence basis insuring against all claims, loss, cost, damage, expense or liability from loss of life or damage or injury to persons or property arising out of any of the work or activity under or by virtue of this Lease Agreement. The minimum limits of liability for this coverage shall be \$1,000,000 combined single limit for any one occurrence and \$1,000,000 aggregate.
2. Workers' Compensation. Lessee shall obtain and maintain Workers' Compensation insurance covering all statutory obligations under the laws of the Commonwealth of Virginia and Employer's Liability insurance for all its employees engaged in work under this Agreement. Minimum limits of liability for Employer's Liability shall be \$ 100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (Policy limit); and \$100,000 bodily injury by disease (each employee). With respect to the Workers' Compensation and Employer's Liability coverage, the insurance company providing such coverage shall waive rights of subrogation against the City, its officers, agents, employees and volunteers.
3. Automobile Liability. Lessee's Automobile Liability insurance shall be in the minimum limit of liability for such insurance shall be \$1,000,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this Lease Agreement or under a sublease agreement.
4. Umbrella Coverage. The insurance coverages and amounts set forth in this Section 9 may be met by an umbrella liability Policy following the form of the underlying primary coverage in a minimum amount of \$ 1,000,000. Should an umbrella liability insurance coverage Policy be used, such coverage shall be accompanied by a certificate of endorsement stating that it applies to the specific Policy numbers indicated for the insurance providing the coverages required by subsections 1, 2 or 3, and it is further agreed that such statement shall be made a part of the certificate of insurance furnished to the City.

B. Evidence of Insurance. All insurance shall meet the following requirements:

1. Lessee, the Cohort Company, or the other sublessee shall furnish the City a certificate or certificates of insurance showing the type, amount, effective dates and date of expiration of the policies. The City shall be

notified of any deductible greater than 10% of the policy limit and such deductible shall be subject to approval of the City, which shall not be unreasonably withheld. However, this deductible requirement shall not apply to pre-funded/fully-funded deductible programs upon proper documentation acceptable to the City's Risk Manager.

2. The required certificate or certificates of insurance shall include substantially the following statement: "The insurance covered by this certificate shall not be canceled or materially altered, except after thirty (30) days written notice has been provided to the City of Roanoke."
3. Except for Workers' Compensation coverage and Employer's Liability coverage, the required certificate or certificates of insurance shall name the City, its officers, agents, employees, and volunteers as additional insureds in connection with this Lease Agreement.
4. Insurance coverage shall be in a form and with an insurance company approved by the City which approval shall not be unreasonably withheld. Any insurance company providing coverage under this Lease Agreement shall be authorized to do business in the Commonwealth of Virginia.

C. During the Lease Term, Lessor shall maintain a self-insured program administered by the Office of Risk Management covering the Leased Premises.

SECTION 10. DAMAGE OR DESTRUCTION

In the event the Leased Premises or any part thereof is destroyed or so damaged by fire or other casualty as to make the Leased Premises totally or partially unfit for use, the Lessor shall have the option either to repair such damage or to terminate this Lease Agreement. The Lessor shall provide Lessee with notice of the Lessor's election within sixty (60) days after the occurrence of the casualty that caused the damage or destruction of all or a portion of the Leased Premises. All subleases shall include this provision.

SECTION 11. CONDEMNATION

In the event the whole of the Leased Premises is taken by eminent domain, this Lease Agreement and all subleases shall terminate as of the date title to the Leased Premises vests in the condemning authority. If a portion of the Leased Premises is taken by eminent domain, either party shall have the right to terminate this Lease Agreement as of the date of transfer of title, by giving thirty (30) days' written notice to the other party. In the event of any taking under the power of eminent domain, Lessee shall not be entitled to any portion of the award paid for the taking and the Lessor shall receive the full amount of such award. Lessee hereby expressly waives any right or claim to any portion thereof. Although all damages, whether awarded as compensation for diminution in value of the license or to the fee of the Leased Premises, shall belong to the Lessor, Lessee shall have the right to claim and recover from the condemning authority, but not from the City acting as Lessor, such compensation as may be separately awarded or recoverable by Lessee on account of any and all damage to Lessee's business and any

costs or expenses incurred by Lessee in removing its equipment, personal property, and any relocation expenses.

SECTION 12. RISK OF LOSS

Notwithstanding anything herein to the contrary, Lessee shall bear the risk of any loss of, or damage to, the Leased Premises and/or any goods and items or personal property in the Leased Premises during the Lease Term. Also, notwithstanding anything herein to the contrary, City shall not be liable for any direct, consequential, incidental, or any other damages incurred by Lessee, any Cohort Company, or any other sublessees, due to any malfunction, theft, vandalism, acts of God (including, without limitation, lightning, wind, rain, flood, hail, fire or storms) lack of electricity, lack of air conditioning, lack of heat, or any other damages resulting from any reason whatever to the Leased Premises or arising out of or resulting from any use of the Leased Premises by the Lessee or its sublessees, users, or occupants.

SECTION 13. INDEMNIFICATION

A. Lessee agrees and binds itself, and shall require the same of any Cohort Company (or any other sublessee), to indemnify, keep and hold the Lessor, its officers, agents, employees and volunteers free and harmless from any and all claims, causes of action, damages, costs (including attorney's fees), or any liability on account of any injury or damage of any type to any third party persons or property growing out of or directly or indirectly resulting from any act or omission of Lessee arising from or related to the following items: (1) Lessee's use of the public ways or other areas of Lessor in connection with this Lease Agreement; (2) the operation, maintenance, repair or extension of the Leased Premises but only to the extent the operation, maintenance, repair or extension is the responsibility of Lessee hereunder; (3) the failure, refusal or neglect of Lessee to perform any duty imposed upon or assumed by Lessee or under this Lease Agreement; (4) any claim made against the Lessor made or arising out of any negligence or intentional misconduct of Lessee or a Cohort Company (or any other sublessee); or (5) any claim brought by a subtenant of Lessee against the Lessor for any reason arising from the use of the Leased Premises by such subtenant; provided however that Lessor shall be responsible for those portions of the claims, causes of action, damages, costs or any liability relating to or arising from Lessor's duties hereunder, negligence or intentional misconduct. In the event that any suit or proceeding shall be brought against the Lessor at law or in equity, either independently or jointly with Lessee or a Cohort Company (or any other sublessee) on account of anything set forth above, Lessee, upon notice given to it by the Lessor, will defend the Lessor in any such action or other proceeding, at the cost of Lessee; and in the event of any settlement or final judgment being awarded against the Lessor, either independently or jointly with Lessee, then Lessee will pay any such settlement or judgment or will comply with such decree, pay all reasonable costs and expenses of whatsoever nature and hold the Lessor, its officers, agents, employees and volunteers harmless therefrom. Lessor shall not enter into any settlement for any such action, proceeding or claim without the agreement of Lessee; failure to secure Lessee's agreement to such settlement shall waive Lessor's right to indemnification of such settlement payment and all related and associated costs and expenses.

B. Virginia Western Foundation's liability to City arising from or related to this Lease Agreement and the Management Services Agreement for any claims or damages

("Claims") that are covered by the proceeds of Virginia Western Foundation's insurance programs, shall be limited to the actual insurance proceeds that are paid to or on behalf of Virginia Western Foundation. If the Claim is not covered by insurance required herein, the Foundation's liability shall be limited to \$125,000 or the amount of the Claim, whichever is less. If Virginia Western Foundation fails to maintain the insurance required herein, there shall be no cap on Virginia Western Foundation's liability for Claims.

SECTION 14. NONDISCRIMINATION

During the Lease Term, Lessee agrees as follows:

A. Lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by law relating to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Lessee. Lessee agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

B. Lessee, in all solicitations and advertisements for employees placed by or on behalf of Lessee, will state that Lessee is an equal employment opportunity employer.

C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

D. Lessee will include the provisions of the foregoing paragraphs A, B, and C in every contract, subcontract, or purchase order of over \$10,000, so that the provisions will be binding upon each contractor, subcontractor, or vendor.

SECTION 15. DRUG-FREE WORKPLACE

A. During the Lease Term, Lessee agrees to (i) provide a drug free workplace for Lessee employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of Lessee that Lessee maintains a drug free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

B. For the purposes of this section, "drug free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Lease Agreement.

SECTION 16. FAITH BASED ORGANIZATIONS

Pursuant to Virginia Code Section 2.2-4343.1, all parties shall be advised that the Lessor does not discriminate against faith-based organizations.

SECTION 17. DEFAULT AND TERMINATION

A. Lessor may give the Lessee fifteen (15) days written notice of its intent to terminate this Lease Agreement because of a default in the performance of any covenant of this Lease Agreement or the Management Services Agreement. Events of default under the Lease Agreement shall include:

1. Non-payment of rental payments;
2. Non-payment of utilities, materials, or services which cause a lien upon the premises;
3. Destruction or damage to the premises caused by Lessee or the public for which Lessee does not provide reimbursement, except for normal wear and tear;
4. Use of premises for any unlawful act;
5. Failure to provide or pay for, as the case may be, required insurance coverage;
6. Any unapproved modification to premises which would cause the Leased Premises to violate building codes, fire codes, or other ordinances.

B. If the fifteen (15) days written notice of termination provided for in this section is given, and such default has not been cured by the defaulting party within fifteen (15) days after written notice is received; or if such default shall be of such nature that it cannot be cured completely within such fifteen (15) day period yet the breaching party has not promptly commenced within such fifteen (15) day period to proceed with reasonable diligence and in good faith to remedy such default, then at the expiration of such period this Lease Agreement shall terminate as completely as if that were the date herein definitely fixed for the expiration of the term of this Lease Agreement, and the Lessee shall then surrender the leased property to the Lessor.

C. Upon expiration or termination of this Lease Agreement, the Leased Premises shall be in good order as when received and/or including all agreed upon changes to the Leased Premises made in accordance with the terms of the Lease Agreement, ordinary wear and tear excepted, with any and all fixtures and equipment owned by the City and any equipment furnished by Virginia Western Foundation to replace similar equipment which may have become lost, damaged, or destroyed

SECTION 18. INCORPORATION OF MANAGEMENT SERVICES AGREEMENT

The Lessor and Lessee covenant and agree that all terms and conditions of the Management Services Agreement related to the Lease Premises are incorporated by reference into this Lease Agreement and are a material part of this Lease Agreement.

SECTION 19. NOTICES

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested, or by a nationally recognized overnight courier, addressed as follows:

If to City, to: City of Roanoke
Attn: Director of Economic Development
117 Church Avenue S.W.
Roanoke, Virginia 24011
Fax no. (540) 853-1213

If to Virginia Western
Foundation, to: Virginia Western Community College Educational
Foundation, Inc.
3093 Colonial Avenue, S. W.
Roanoke, Virginia 24015
Attn: Dr. Angela Falconetti

With a copy to: Woods Rogers, PLC
10 S Jefferson St SW
Suite 1400
Attn: Nick Conte, Esq.

SECTION 20. MISCELLANEOUS

A. Cooperation. Each party agrees to cooperate with the other in executing any documents necessary to carry out the intent and purposes of this Lease Agreement.

B. Severability. If any term of this Lease Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease Agreement which shall continue in full force and effect. The parties intend that the provisions of this Lease Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

C. Authority. The persons who have executed this Lease Agreement represent and warrant that they are duly authorized to execute this Agreement in their representative capacities as indicated.

D. Counterparts Allowed. This Lease Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

E. Compliance with Laws. Lessee and Lessor shall at all times comply with all applicable federal, state, and local laws, ordinances, and regulations, and obtain all required licenses required by the City of Roanoke and the Commonwealth of Virginia, and other regulatory agencies, necessary to operate Lessee's business.

F. Successors. The terms, conditions, provisions and undertakings of this Lease Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

G. Captions. The paragraph Captions and Headings in this Lease Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Lease Agreement.

H. Governing Law. By virtue of entering into this Lease Agreement, Lessee and the Lessor agree and submit themselves to a court of competent jurisdiction in the City of Roanoke, Virginia and further agree that this Lease Agreement is controlled by the laws of the Commonwealth of Virginia or any applicable federal laws and that all claims, disputes, and other matters shall be decided only by such court according to the laws of the Commonwealth of Virginia or any applicable federal laws.

I. Waiver. Lessee agrees that the Lessor's waiver or failure to enforce or require performance of any term or condition of this Lease Agreement or the Lessor's waiver of any particular breach of this Lease Agreement by Lessee extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Lease Agreement or a waiver of any other breaches of this Lease Agreement by Lessee and does not bar the Lessor from requiring Lessee to comply with all the terms and conditions of the Lease Agreement and does not bar the Lessor from asserting any and all rights and/or remedies it has or might have against the Lessee under this Lease Agreement or by law.

J. Entire Agreement. This Lease Agreement, the Management Services Agreement, and its exhibits constitute the entire agreement and understanding of the parties, and supersede all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by both parties. Lessee acknowledges that it has participated in the drafting of this Lease Agreement. In the event of a dispute concerning any provision of this Lease Agreement, Lessee hereby acknowledges and agrees that it will not rely on any defense that any ambiguity in this Lease Agreement should be construed against the drafter of this Lease Agreement and Lessee waives that defense. Lessee agrees that the Lessor shall have no responsibility, duty or obligation to provide Lessee any services, property, or items that are not otherwise indicated in this Lease Agreement.

SIGNATURE PAGE TO FOLLOW

DRAFT DATE 10/12/2015

IN WITNESS WHEREOF, the parties have executed this Lease Agreement by the following signatures by their authorized representatives.

ATTEST:

CITY OF ROANOKE, VIRGINIA, a Virginia
municipal corporation

City Clerk

By: _____
Christopher P. Morrill, City Manager

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

)
) to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Christopher P. Morrill, City Manager, of the City of Roanoke, Virginia, a municipal corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____

(SEAL)

DRAFT DATE 10/12/2015

VIRGINIA WESTERN COMMUNITY
COLLEGE EDUCATIONAL
FOUNDATION, INC.

Witness: _____

By: _____
Printed Name _____
Title _____

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE

)
) to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, of the Virginia Western Community College Educational Foundation, Inc., a non-stock corporation organized and existing under the laws of the Commonwealth of Virginia.

My commission expires: _____

Notary Public

Registration No. _____

(SEAL)

Approved as to Form:

Assistant City Attorney

Approved as to Execution

Assistant City Attorney

Authorized by Ordinance No.: _____

EXHIBIT A
TO LEASE BETWEEN CITY AND VIRGINIA WESTERN
FOUNDATION DATED _____, 2015

LESSOR'S WORK LETTER

The City shall perform the following work on the Leased Premises:

1. Exterior painting as needed
2. Replace or repair exterior hardware (gutters, shutters, lights, etc.)
3. Selective interior demolition
4. Interior wall reconfiguration
5. Replace doors as needed
6. Renovate bathrooms
7. Adjustments to HVAC, electrical, and plumbing systems to accommodate new office configuration and bathroom renovations
8. Obtain all required permits
9. Any other renovations mutually agreed to by the City and Virginia Western Foundation or its designee during the design and renovation process described in Section 3 of this Management Services Agreement

A part of the City's above work is to ensure that the Leased Premises will be in compliance with all laws, ordinances and regulations of or relating to commercial property located in the City of Roanoke, VA, including but not limited to the Americans with Disabilities Act of 1990 ("ADA"), building codes and environmental laws, prior to the Foundation's occupancy of the Leased Premises. The total cost of all renovations including architect/engineering fees, permit fees, inspection services, and related administrative costs shall not exceed \$600,000.

Roanoke Acceleration Center Pro Forma

Note: Floors 1-3 are 3,872 sq. ft. each, basement is 3,328 sq. ft. Total is 14,944 sq. ft. GLA based on architect's recommendation. Floor 2 GLA is reduced due to shared classroom/meeting space.

Occupancy %	50%	60%	70%	80%	90%	100%	Rent Sq Ft
Basement	0	0	0	0	0	0	\$0
First Floor (2,333 GLA) *1	34,995	34,995	34,995	34,995	34,995	34,995	\$15
Second Floor (2,000 GLA)	12,000	14,400	16,800	19,200	21,600	24,000	\$12
Third Floor (2,700 GLA)	20,250	24,300	28,350	32,400	36,450	40,500	\$15
Total Leasable Sq Ft = 7,033							
Revenue:							
Rent	67,245	73,695	80,145	86,595	93,045	99,495	
Roanoke EDA	20,000	20,000	20,000	20,000	20,000	20,000	
Total Revenue	87,245	93,695	100,145	106,595	113,045	119,495	
Facility Expenses:							
Utilities:							Monthly
Water & Sewer *2	3,946	4,154	4,373	4,603	4,845	5,100	\$425
Electric & Gas *2	16,714	17,593	18,519	19,494	20,520	21,600	\$1,800
Phone	2,100	2,100	2,100	2,100	2,100	2,100	\$175
Internet *2	4,643	4,887	5,144	5,415	5,700	6,000	\$500
Housekeeping (includes trash) *2	11,607	12,218	12,861	13,538	14,250	15,000	\$1,250
Building Expense/Maintenance	7,800	7,800	7,800	7,800	7,800	7,800	\$650
Security System	2,100	2,100	2,100	2,100	2,100	2,100	\$175
Insurance - Property & Liability	1,200	1,200	1,200	1,200	1,200	1,200	\$100
Licenses, Permits, Misc. Taxes	1,800	1,800	1,800	1,800	1,800	1,800	\$150
Miscellaneous *2	3,714	3,910	4,115	4,332	4,560	4,800	\$400
Facility Expenses	55,623	57,762	60,012	62,381	64,875	67,500	
Program Expenses:							
Bookkeeping	9,600	9,600	9,600	9,600	9,600	9,600	\$800
Legal/Accounting Fees	8,400	8,400	8,400	8,400	8,400	8,400	\$700
Marketing	12,000	12,000	12,000	12,000	12,000	12,000	\$1,000
Meeting Expenses *2	2,400	2,880	3,360	3,840	4,320	4,800	\$400
Property Management Expenses	4,035	4,422	4,809	5,196	5,583	5,970	6% Rent
Office Supplies & Expenses	4,800	4,800	4,800	4,800	4,800	4,800	\$400
Program Expenses	41,235	42,102	42,969	43,836	44,703	45,570	
Total Expenses	96,858	99,863	102,981	106,217	109,578	113,070	
Cash Flow *3	(9,613)	(6,168)	(2,836)	378	3,467	6,425	

Notes:

- 1 Virginia Western CC commitment to rent space on first floor
- 2 Expenses adjusted for occupancy
- 3 Roanoke City will cover any operational losses up to \$25,000 per year

W. Collins

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

AN ORDINANCE authorizing the City Manager to execute a lease agreement and services agreement with Virginia Western Community College Educational Foundation, Inc. ("Foundation"), for the lease of an approximately 0.1671 acre parcel of City-owned property located at 709 South Jefferson Street, S.W., Roanoke, Virginia, known as the former Gill Memorial Hospital Building ("Gill Memorial Property"), designated as Roanoke City Official Tax Map No. 1020510; and dispensing with the second reading of this ordinance by title.

WHEREAS, a public hearing was held on October 19, 2015, pursuant to Sections 15.2-1800 and 15.2-1813, Code of Virginia (1950), as amended, at which hearing all parties in interest and citizens were afforded an opportunity to be heard on the proposed lease.

THEREFORE, BE IT ORDAINED by the Council of the City of Roanoke as follows:

1. The City Manager is hereby authorized to execute, in a form approved by the City Attorney, a lease agreement with the Foundation to lease an approximately 0.1671 acre parcel of City-owned property located at 709 South Jefferson Street, S.W., Roanoke, Virginia, designated as Roanoke City Official Tax Map No. 1020510, to be operated by the Foundation, or its designee, as an acceleration center focused primarily on connecting early stage companies to peers, mentors, and investors at the Gill Memorial Property, for a term of five years, commencing on the date the Foundation, or its designee, first occupies the Gill Memorial Property ("Lease"). The Lease shall be substantially similar to the proposed lease attached to the Management Services Agreement ("Services Agreement"), a copy of which Services Agreement is included in the City Council Agenda Report dated October 19, 2015. The City Manager is

authorized to execute the Services Agreement. The Services Agreement sets forth the terms under which the Foundation, or its designee, will operate the acceleration center. Pursuant to the terms of the Lease and Services Agreement, the Foundation, or its designee, will pay a nominal rent to the City, and the City, subject to appropriation, will pay operational expenses of the acceleration center that exceed revenues generated at the acceleration center, up to \$25,000 annually during the term of the lease, as more particularly described in the City Council Agenda Report dated October 19, 2015. The form of the Lease and the Services Agreement shall be approved by the City Attorney.

2. The City Manager is further authorized to execute such other agreements and documents, and take such other actions, deemed necessary to effectuate, implement, administer, and enforce the Lease and the Services Agreement. The form of such other agreements and documents shall be approved by the City Attorney.

3. Pursuant to the provisions of Section 12 of the City Charter, the second reading of this ordinance by title is hereby dispensed with.

ATTEST:

City Clerk.